SENATE—*Thursday, April 24, 1980*

(Legislative day of Thursday, January 3, 1980)

The Senate met at 10 a.m., on the expiration of the recess, and was called to order by the Acting President pro tempore (Mr. HEFLIN).

PRAYER

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

Let us pray.

O Thou who withholds no good gift from those who walk uprightly and call upon Thee with sincere hearts, help us this day to think upon what is true and just and righteous in Thy sight. Grant us grace to speak prudently when we must speak; to remain silent when we have nothing to say; to learn by listening and by study; to be unafraid of the hard decision; to act according to Thy will as we understand it, and to leave the consequences to Thy Providence. Reward our faithfulness by souls at peace with Thee.

We pray in His name who is the Way, the Truth, and the Life. Amen.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. Under the previous order, the majority leader is recognized.

Mr. ROBERT C. BYRD. Mr. President, I yield to the distinguished Senator from Wisconsin such time as he may desire of the time allotted to me under the order.

THE GENOCIDE CONVENTION: OUR DUTY TO THE FUTURE

Mr. PROXMIRE. I thank my good friend, the majority leader.

Mr. President, for the last few days, I have spoken of Raoul Wallenberg, the remarkable Swedish gentile who devoted his life to helping rescue Jews who suffered in Hitler's terrible purge in World War II.

Today, I want to speak of his opponent in that deadly struggle to save Jewish lives, Adolf Eichmann. Time magazine recently announced the inclusion of part of Eichmann's personal memoirs in an upcoming book by Gideon Hausner, the man who prosecuted him. Eichmann wrote these memoirs while awaiting the outcome of an appeal of his sentence in Israel.

Eichmann was executed on May 31, 1962, for his role in the massacre of the Jewish people. The legacy he left in terms of death, suffering, and agony can never be balanced. It must never be forgotten.

His personal memoirs are a part of that legacy. They are a testament to the diseased mind that could contemplate and carry out such a diabolical plot.

At one point in his writing, Eichmann declares:

> The Holocaust was the greatest crime in history. I was never taken in by the mysticism of Nazi ideology. My views never matched the official line. I always had doubts.

Yet this same man can also write:

> The Gods I worshiped demanded the dance of death. I had no choice and whoever claims otherwise is a liar.

The reasoning is absurd. Nobody can rationalize genocide. Nothing can justify it.

The Time article ends by summarizing continuing efforts to apprehend Nazi war criminals. Three former Gestapo agents were convicted recently in Cologne and are currently awaiting the results of an appeal to higher courts.

The one paragraph summary at the end of the article makes a very important point. It ties the past with the present. Genocide occurred 35 years ago. But these trials today must remind us that the effects of genocide reverberate through time. The aftermath of genocide cannot be confined to an arbitrary number of years. Genocide is an abiding stain on all human culture, a stain time will not erase.

The Time article points out that the effects of genocide against the Jews are still present. But I have a more important point to make. I want to ask whether genocide still occurs. To the shame of all humanity, the answer is an unequivocal "Yes." Six million Jews were exterminated by Hitler during World War II. Tens of thousands of tribesmen were persecuted and destroyed by Idi Amin in Uganda.

What have we done about genocide? To the shame of us all, nothing.

Nothing done in the face of these shocking, blatant examples of genocide in our time is intolerable. The isolation of the Jewish holocaust in history is not an excuse for inaction. It is not an isolated historical example. We have other shocking examples of genocide before us. We have examples in history. But I hope and pray that we do not have any in our future.

What can the Senate do to prevent further instances of genocide? The Senate can act by ratifying the Genocide Convention. This convention seeks to formally proscribe genocide as an international crime. It seeks to formally punish an outrage against the basic premise of a civilized world. It embodies in formal law our disgust for this heinous crime.

We must act now lest our descendants be forced to bear the burden of our inaction by bearing witness to further cases of genocide. We have a duty to our descendants, to future generations, and to the very concept of a civilized world to act now to prevent genocide.

I call on my colleagues to ratify the Genocide Convention.

Mr. President, I ask unanimous consent that the text of the Time article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

PRISON MEMOIR: EICHMANN'S PLEA FOR A REPRIEVE

"The Gods I worshiped demanded the dance of death. I had no choice, and whoever claims otherwise is a liar." So wrote Adolf Eichmann, after his four-month 1961 trial in Israel, as he attempted to justify his role in the wartime deaths of millions of Jews. The onetime SS officer who was chiefly responsible for carrying out the Final Solution of the Third Reich's "Jewish problem" even insisted that he was not anti-Semitic. Eichmann had made that claim somewhat obliquely in court and more directly in a lengthy "confession" to a German journalist that was published by Life in 1960. He repeated that disavowal in a little-known, long suppressed personal memoir that is now coming to light. Declared Eichmann: "The Holocaust was the greatest crime in history. I was never taken in by the mysticism of Nazi ideology. My views never matched the official line. I could never identify with the objectives of national socialism. I always had doubts."

These statements disavowing Nazism are contained in a rambling account of his life that Eichmann wrote in prison while awaiting the results of an appeal of his conviction. (The appeal was rejected by Israel's Supreme Court, and on May 31, 1962, he was executed by hanging.) The apparent purpose of his memoir was to bolster his chances of a reprieve and to arouse public sympathy. Eichmann asked his defense attorney, Robert Servatius, to seek permission for its publication. The trial prosecutor, Gideon Hausner, refused; then Premier David Ben-Gurion ordered that the manuscript be suppressed for 15 years and placed in the state archives. Its existence was known to only a few people.

Portions of the memoir will be contained in an updated Hebrew edition of Hausner's 1966 book on the trial, *Justice in Jerusalem*, which will be published in Israel this March. Hausner, who is now chairman of the Yad Vashem memorial to Holocaust victims in Jerusalem, feels the entire manuscript should not be published on the grounds that it is rambling, repetitive and stuffed with what he calls the typical Nazi "jargon of violence." Besides, adds Israel's former Attorney General, "I felt that Eichmann had ample opportunity to make his defense during the trial, and did not feel that we owed him any other platform."

Nonetheless, the excerpts that Hausner does include contain some interesting tidbits. Although Eichmann, prior to his arrest, had proudly professed his allegiance to Hitler, he warns in his memoir "against following idols, like the parched bones drying up in the desert." The warning was directed to both the next generation—"The youth of the world should unite. The adults failed"—and to women—"Maybe women should be entrusted with the responsibility for the world because they are led by emotion and not by intellect. Maybe they would do better than we did." Eichmann also discloses that he had been

ordered to check out the racial origins of the "Diet Chief," the code name for Hitler's mistress, Eva Braun. It was discovered that Braun was one-thirtysecond Jewish.

Hausner gives no credibility to Eichmann's prison denials. "I don't believe him when he says he is not anti-Semitic. We have evidence of his own acts. And we have other private remarks of his in which he gives vent to his feeling that he would have been happy if all 11.3 million Jews had been exterminated."

Meanwhile, the exposure of Eichmann's coworkers continues. In Cologne, three former Gestapo agents—one the mayor of a Bavarian town—were convicted of deporting 73,000 French Jews and Communists to Nazi concentration camps. The longest sentence given was for twelve years. During the 18-week trial, which was attended by dozens of angry survivors of Auschwitz and Treblinka, the defendants denied knowing at the time the real purpose of the death camps. They were imprisoned last week while a higher court heard their appeals.

Mr. PROXMIRE. I thank my good friend, the majority leader, for so graciously yielding. I yield the floor.

Mr. ROBERT C. BYRD. Mr. President, does any other Senator wish to have me yield time? Does the minority leader need additional time?

RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore. Under the previous order, the minority leader is recognized.

Mr. BAKER. Mr. President, I thank the distinguished majority leader for his offer to yield to me the time remaining under the standing order.

TWENTIETH ANNIVERSARY OF CONGRESSIONAL SERVICE BY SENATOR MATHIAS

Mr. BAKER. Mr. President, this year marks the 20th year of congressional service for our distinguished colleague from Maryland, Mr. MATHIAS.

This is an anniversary well worth celebrating, because MAC MATHIAS has been a civilizing, illuminating, inspiring influence in the public affairs of this country during two of the most challenging decades in our history.

The Senate has been especially fortunate these last 12 years to have the benefit of his wise counsel and his sound and independent judgment on the major issues of our time.

We on the Republican side of the aisle are very proud to count a man of MAC MATHIAS' calibre among our number, and he has distinguished our party with his talented service.

As Republican leader of the Senate, I have been particularly fortunate in being able to turn to MAC MATHIAS on many occasions to seek his advice on matters of party policy, to gain his insights on legislative procedures that will advance those policies, and to share the special perspective on national issues which is his trademark in the Senate.

But the surpassing quality of MAC MATHIAS—beyond his broad experience, beyond his keen intellect, beyond his legislative skill—is a special personal quality that has been of enormous value to this country and its government these last 20 years.

It is the quality of absolute integrity—a combination of courage, devotion to duty, profound patriotism, loyalty, personal grace, and commonsense—which has made MAC MATHIAS a man of enormous influence for the good of his State and the good of the Nation.

The people of Maryland have sent MAC MATHIAS to the Senate in 1968 and 1974—years of national trial when calm and reasoned voices were most in need.

The election of 1980 finds us in another time of trial, with economic distress here at home and dangerous tensions abroad. We need the calm, reasoned, powerful voice of MAC MATHIAS in the Senate now more than ever before, and I fervently hope the people of Maryland will elect him to a third term this November.

Mr. ROBERT C. BYRD. Does the distinguished Senator from Illinois need additional time beyond the time under his order?

Mr. STEVENSON. No, Mr. President, I need no additional time.

RECOGNITION OF SENATOR STEVENSON

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Illinois (Mr. STEVENSON) is recognized for not to exceed 15 minutes.

THE UNCONVENTIONAL ECONOMIC WISDOM

Mr. STEVENSON. Mr. President, during the decade of the seventies the prices of food, gold, and oil increased several fold. The dollar was unhitched from gold and sank like a barometer of world confidence in our ability to discipline ourselves and compete. The International Monetary System the United States helped forge at Bretton Woods collapsed, and more than a trillion dollars in xenocurrencies came to speed about the world in mysterious, sometimes destabilizing, and inflationary ways. Japan and West Germany, their preconceptions, like their factories, obliterated in World War II, began to win the new world war for markets and trade. Another wave of competition appeared, as a handful of less developed countries came on stream with modern steel mills and low-cost textiles. Other countries neared insolvency, as a revolution of rising expectations swept through the Third World and was disappointed, leaving an embittered, unstable majority of nations in global politics.

By the end of the century, the population of the world may increase 50 percent. Already half a billion of the world's people are hungry. Humanity approaches the margins of survival as the United States, like other nations, pays farmers not to produce food. The world's available sources of oil and other essential materials—even air and fresh water—are vulnerable. One-third of the world's arable land may be destroyed by the end of this century. More change, and at accelerating rates, is the only certainty. Everything is changing, except the orthodoxies which shape attitudes and policies in America.

In America, the frontiers are long gone. Our cities are aging and crowded, the environment expensive to protect. Cheap labor comes only with foreign immigrants and refugees we no longer welcome. The United States, although advantaged still, is dependent like other nations on expensive foreign sources of the most essential materials, including oil.

In the aftermath of World War II, we were not hesitant before large challenges. We did not lack ideas about what to do. The United States led the postwar recovery of Europe and built global institutions which gave the world a measure of peace and stability. Later, it pushed back the frontiers of human knowledge, eliminated polio and TB, and sent men to the Moon.

Today, our politics produces little to correct the underlying causes of the world's and our own insecurity—including dependence on undependable sources of oil in the Persian Gulf and an ongoing war in the Middle East. It produces conventional wisdom—a peace process that produces no peace nor rights of self-determination for Palestinians, SALT agreements and more arms, inflation, and recession, more methods without ends. The budget, it is said, must be increased for defense and decreased for inflation.

Our security has less to do with the U.S.S.R. and defense budgets than with the wisdom of our diplomacy and the strength of our economy. Not many free societies have long survived 18-percent inflation. The world's stability and our security depend on the great locomotive force of the U.S. economy. Social justice, the unifying confidence of the American people—everything is tied together and dependent on the American economy, which is, itself, a reflection of our society's vitality. In terms of sound growth, stable prices, employment opportunities, innovation, and productivity, the U.S. economy is sick.

Our economic policies, like the impulses which pass for foreign policy, are reactions to symptoms. They rarely address the phenomena which gave rise to them. The Nation suffers the worst price inflation in its peacetime history. The conventional wisdom assigns the cause to excessive demand—that is to say, excessive spending by Government and consumers. The conventional response is to decrease Federal spending, with budget cuts for everything, except the military, credit controls, and the highest interest rates in history.

These orthodoxies may strengthen the dollar temporarily, but they retard modernization and investment in productive sectors. Nineteen-percent interest rates divert money away from long-term investments in housing and efficient plants,

and away from equity financing for high-risk ventures capable of producing innovation. They postpone development of the energy, food production, health and transportation systems, and high technology industries which could, over time, stabilize prices. Low rates of productivity growth produce more inflation. And with more inflation, more stagnation, more budget deficits, trade deficits, weak currencies, and declining growth rates the world over, the wheel takes another turn.

An unconventional wisdom holds that our economic problems are structural. It holds that the neglect of long-term imperatives has undermined our scope for short-term control of the economy. Unlike familiar business cycles, persistent inflation and structural stagnation do not yield readily to fiscal and monetary tools. An unconventional wisdom suggests that this inflation is not caused by excessive demand or overheating.

Inflation can accompany decreased demand as companies increase prices to maintain profits on smaller volumes of sales, or as they say, to cover increased costs. As labor productivity goes down, the wages of organized labor go up. This inflation is caused by distortions in the marketplace and inefficiencies and high producer costs, of which food and energy costs are examples. It is caused by insufficient capacity in some industries, overcapacity in others, and Government policies which inhibit productivity, investment and exports. It is caused by a psychology which anticipates more inflation. It is caused by nations and corporations competing for xenocurrencies at ever higher interest rates. And it will not be cured by economic orthodoxies, including wage and price controls. Controls are more symptomatic relief—more excuses for doing nothing. And doing nothing already threatens collapse of the International Financial System.

Nearly $400 billion in market value has been lost in the collapse of Wall Street bond markets since last October. OPEC oil producers prefer foreign banks for investment of their $120 billion surplus this year. Some bank loans to nations and businesses are turning soft. And as corporations and banks compete for funds at high interest rates, the danger of a liquidity squeeze—even a panic—looms. For lack of secure, politically acceptable and inflation-proof investment vehicles, the foreign oil producers are cutting back production. The political imponderables of this disordered world weigh heavily against the success of policies based on abstractions about the behavior of nations and markets in the 18th century.

The economic orthodoxies of the seventies are being played out, like those during the twenties, little heeding the structural causes of inflation and stagnation in a changing world. This process could continue until the futility of the conventional wisdom is inescapable again, and the Government is pressed to act in ways which cause permanent damage to a system of free enterprise which is still basically sound.

With more vision and plausibility, the United States would combine an intelligently balanced budget with efforts to remedy structural, economic defects. Our actions would address, and not exacerbate, our problems. They would have a global dimension.

In Japan the invisible hand of Adam Smith is the visible hand of government and industry establishing sound directions for the economy. In Japan, business and government look to the next decade, not the next profit and loss statement. Japan is committed to economic growth. It produces for a global market, exports and brings wealth, employment and the fastest rising standard of living anywhere to its people.

The Japanese Government does not "cool off" demand pressures that far exceed our own. Until recently Japanese interest rates were maintained below 5 percent. Even now they are half our own rates; and there is no shortage of capital for the targeted industries of Japanese growth. Last year, the Japanese Government's budget deficit was $62 billion—more than the central governments deficits of the United States, Britain, and France combined. And its inflation rate was under 5 percent. Japan follows the reverse of our conventional wisdom. It makes choices. It invests in its economy, not its military, and then it markets its products aggressively in the world.

An unconventional wisdom suggests that a balanced Government budget is no more important than what a government does with its revenues. A nation that uses Federal moneys for farm price supports, corporate geriatrics and billion dollar race tracks for missiles should not be surprised by inflation rates of 20 percent. Our Government subsidizes the least competitive industries and shelters agriculture and the powerful in labor and industry from the natural workings of the market. It resists, instead of facilitating, adjustment to change. At the same time, it ignores the unnatural workings of a market which assigns the highest stock values to gambling houses, a market which neglects the imperatives of competition in a resource hungry, interdependent world, and indulges extravagant products, planned obsolescence, excessive advertising and layer upon layer of legal, accounting and other transactional costs. The credit controls, like the budget cuts, will affect demand in a tiny part of a $2 trillion economy and do little to assure credit for the most productive purposes.

Priorities are needed which squeeze waste from the economic system, enlarge investments in human knowledge and real wealth, and enhance the quality of life. Those priorities are not likely to be set by zero-base budgets, the budgetary meat axe, indiscriminate tax cuts, credit and price controls, or social nostrums which ultimately require everybody to subsidize everybody else through the clumsy offices of the Government.

The West German Government, at all levels, spends 46 percent of GNP, as compared with 32 percent in this country. German deficits are relatively larger, their public investments relatively higher, and public sector debt in that country—as in Japan—is growing rapidly. In this country the Federal debt has declined steadily, as a percent of GNP, since 1946. Our orthodoxies insist these are recipes for double-digit inflation. Yet in West Germany prices rose less than 6 percent last year. The experience of Germany and Japan indicates that the soundness of economic decisions is more important than whether they are made in the public or private sectors and that it is possible to combine strengths from both sides. The United States tends to combine the weaknesses of both. The Government and marketplace are encumbered by habit and procedure. Decisions are geared to the status quo. The media, and therefore the market, pay little attention to the realities of a rapidly changing world, until it is too late.

It is said that structural change takes too long. But nothing will be done without a beginning, and much can be done now. Besides, the conventional wisdom will not be convincing for long without recognition of the underlying causes of inflation and recession. The conventional wisdom buys time. Without more it could help plunge the world into depression.

Noncommercial uses of gasoline should be taxed, as in other nations, to cut consumption. Domestic wellhead oil prices should be controlled for longer and at levels which give U.S. producers adequate incentives to produce and consumers an incentive to conserve. "Decontrol" puts an OPEC floor under domestic oil prices—and, therefore, under all domestic energy prices, producing a "windfall" that is taxed for some producers and suppliers, not for others. An unconventional strategy would hit the energy waste with gas taxes and spare the backbone of our energy intensive, developed economy, restoring some advantage of the United States in a competitive world. The gas tax revenues could be used to reduce social security taxes, provide tax incentives for investment and productivity, and move the United States toward a genuinely balanced budget.

A national oil and gas corporation could negotiate in cooperation with other consumer nations for oil at stable prices and assured amounts. We might then with the World Bank and the national companies of other nations undertake to explore for and develop alternative foreign sources of oil and gas, using U.S. capital and technology, including satellites. U.S. energy policy, like most of our policies, lacks a global dimension.

The unconventional wisdom attacks inflation's sources at home and in the world one by one. Hospital costs could be contained now, while incentives are developed over time to keep people healthy instead of expensively curing the unhealthy. Transportation costs could be cut by trucking deregulation. Small farmers could be supported with deficiency payments instead of inflationary

price supports and set-asides. Repeal of the Davis-Bacon Law and enactment of a subminimum wage for youth would reduce inflation and unemployment. The regulatory impediments to increased labor and capital productivity are numberless.

The jawbone could be given some teeth—the council on wage and price stability given the staff and power to monitor wage and price increases. Insulated from political and economic pressures, it could assess publicly the economic implications of public policies before they are adopted. It could monitor organized labor and organized business and expose unjustifiable economic behavior.

The United States could authorize trading companies and develop an export policy to expand our declining share of world trade and sustain that universal currency, the once almighty dollar. A weak dollar increases the costs of imports, including oil, and allows domestic manufacturers to increase the price of their products, a double source of inflation. The nations which trade most successfully have strong currencies and the lowest inflation rates.

After the Civil War, money created to finance it was soaked up by reconstruction, industrialization and the development of the West. In the early sixties high levels of investment, associated research and development and high rates of productivity growth helped sustain high levels of demand and sharply rising wages without inflation.

The production of energy, housing, health services, food and other goods, research and technology, job training, the exploration of the universe and the oceans are today altogether more promising means of controlling inflation than indiscriminate attempts to decrease the demand for goods and the capital for their production. This is an old American notion that once had something to do with entrepreneurship and ingenuity but is better evidenced today in West Germany and Japan.

Some things must be done—even if by the Government. Other nations understand that. They have national fuel and transportation companies. Their industrial and tax policies support industry. Government and industry cooperate, and produce results.

An assembly plant in Japan produces 1,300 cars a day and is manned by 67 workers. Between 10,000 and 15,000 robots are on line throughout Japanese industry; the U.S. lags far behind. The plight of the U.S. domestic auto industry is symptomatic of a disease spreading to the most technology intensive sectors.

The Japanese already have roughly 40 percent of the world market for semiconductors. They may have a corner on the memory market by the mid-1980's. That depends as much on capital and marketing as on technology—and they have the edge. The Japanese computer industry is organized by government for investment, basic research and global competition. Back in the United States, the Justice Department is trying to break up IBM. The U.S. semiconductor industry with annual growth rates of 28 percent and competitive prices for its products is being driven out of the market by policies which dry up capital for all but the largest companies. What is happening with respect to semiconductors is being repeated less obviously in robotics, bioengineering, lasers and most nonmilitary high technology fields.

As the United States enters the space shuttle era, the West Germans, French and others are poised to exploit opportunities for materials processing in a zero gravity environment, and perhaps for routine manufacturing in space. Budget cutting has forced NASA to schedule only nine experiments for the shuttle space lab. The Europeans plan 39. The French plan their own fully automated, unmanned space lab; Japan has committed about $1 billion a year to space exploitation, including materials research.

The conventional wisdom of indiscriminate budget cuts comes down on space sciences and applications, the National Science Foundation's meager support for industrial innovation, high energy physics, aeronautics, energy and agricultural research, mass transit, the National Institutes of Health—the growth oriented, price stabilizing activities of the Government. The conventional wisdom strikes hard at potentials for increased productivity in the public and private sectors. Investments in basic research do not yield immediate results. They are not susceptible to quantitative analyses and cost benefit ratios. The benefits from applied research are difficult to quantify, and no attempt is made to factor in the revenues to Government which they generate. Activities in the public and private sectors which are not geared to immediate returns and lack powerful constituencies suffer from the conventional wisdom. The most productive activities of Government and business lose out under pressures from the status quo.

The political victors of 1980 may suffer the political consequences of their economic orthodoxies for years to come.

The Nation will enter the 1980's with a budget surplus. It will enter the 1980's with no comprehensive energy policy, no food policy, no export strategy, no space policy, no strategy to repair the world's institutions for trade, development and money. It enters the eighties with an aging industrial structure and no industrial strategy. We do not have to look far for signs of the Chrysler syndrome; Ford, United States Steel, the textile industry, all are in for a wave of radical retooling if they are to remain competitive. Without adjustment mechanisms to assist displaced workers and facilitate the transfer of capital to productive sectors, political pressures for employment will lock the country into the spiral of subsidies, inefficiency and declining productivity which have crippled the British economy. There, the Government spends $2 million a day to support the uncompetitive British steel. The United States already has a $500 million loan guarantee program to keep steel firms here afloat.

An industrial strategy for the United States would help businesses adapt to change and assume some responsibility for the retraining and relocation of workers in declining sectors. This does not mean Federal programs or Federal planning. It means incentives, such as the Belgians have adopted, for private firms to employ and retrain workers hurt by structural economic change. The German experience with labor participation in management should be examined for ways to stimulate worker productivity and labor/management peace. The Japanese methods for achieving quality control by design instead of labor consuming inspection and repairs deserves more attention. Capital formation in productive sectors could be facilitated by accelerated depreciation schedules, lower capital gains tax rates to revive risk taking and incentives to investment in R. & D.

Innovation centers could bring Government, industry, and the universities together in a new cooperative effort to develop generic technologies for U.S. industry. Other nations soak up our technology; we should establish an information system which soaks up theirs. Government support for basic research should be increased. The most competitive American industries are those which have enjoyed the most Government support, including computers, aerospace, and agriculture. But efforts to enhance the productivity of capital and labor are cut back or shunted aside by the obsession with conventional fiscal and monetary wisdom.

I have spelled out elements of trade, food, space, and industrial policies elsewhere, all aimed at enhancing the competitiveness of the United States in a competitive world. But a competitive America is not enough. In 1930, the financial collapse of countries—heavily in debt—helped transform the American crash into a global depression. This year the balance-of-payments deficit of the non-oil-developing countries will increase $20 billion to a total of about $60 billion, even as these countries spend almost one-fifth of their export earnings to pay interest on old debts. Upon the continued access of these countries to credit and trade with the industrial countries hangs the world's stability—and our own prosperity. The outflow of funds from banks, the collapse of bond markets, the financial requirements of borrowers, including LDC's, are straining the resources of commercial banks and will strain official credit facilities.

The United States must revive the spirit of Bretton Woods and help the world forge institutions for the future. The IMF must be expanded, with more supplemental financing for the poorest countries. Starting with the proposed substitution account, ways must be found to diversify reserves out of the uncertain dollar and move the world toward a global monetary system with a dependable unit of value. World pres-

sures for protection must be resisted, and trade enriched by competitive exports from the advanced developing countries. With support for basic research, new technologies and the industries of the future, this country, like Japan, will be able to cede some production of textiles, shipbuilding, and other basic industries to the South Koreans, Brazil, and Mexico. A generation hence, it will be Nigeria and Pakistan. They will all become markets for American food and technology, and they will be stable and at peace. The great threat to these countries is not so much from without, as from within, them.

The competition with the Soviet Union is in these countries with gaping needs and high aspirations and three-fourths of the world's people. They will develop economically or suffer convulsions which make them susceptible to alien philosophies and hostile ways of ordering the world's affairs. The West has much to offer in the way of technology, capital, and trade—this Nation most of all. It has most to lose. Other nations are stepping up trade and aid, including Russia. This is a far less expensive approach for the United States than arms credits and military assistance and a far more promising means of competition with Russia.

Somewhere in this vast country lies the vision with which to enlist ourselves and the world in a new cooperative effort to enhance the security and welfare of all. But we are practical men, and, as John Maynard Keynes warned, practical men are usually "slaves to the ideas of some defunct economist." History will not deal kindly with another generation of American leaders which offered nothing but a balanced budget, credit controls, and more arms in the face of global adversity and radical change. Great leaders are not remembered for balanced budgets.

Mr. President, I yield back the remainder of my time, and I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be a brief period for the transaction of routine morning business, not to extend beyond 15 minutes, and that Senators may speak therein up to 5 minutes each.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Is there further morning business? If not, morning business is closed.

CIVIL RIGHTS INSTITUTIONALIZED PERSONS—CONFERENCE REPORT

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of the conference report on H.R. 10, which will be stated by title.

The assistant legislative clerk read as follows:

Conference report on H.R. 10, an act to authorize actions for redress in cases involving deprivations of rights of institutionalized persons secured or protected by the Constitution or laws of the United States.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. THURMOND. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. THURMOND. Mr. President, we are now considering the conference report on H.R. 10. In my opinion H.R. 10 is one of the most dangerous bills that has come before Congress in the 26 years I have been a Member.

I say that because it gives the Justice Department the right to institute suits against the States. Under the present law, they can join in a suit as amicus curiae but they do not have the power to institute suits.

I can understand the Justice Department taking a position after someone has brought a suit. A decision could be made to join in the suit. That is a reasonable position. But whether anyone complains or not—and it may be that no one complains—the Justice Department, under this bill, has the right to institute a suit against any State in this Nation for any alleged violation which is chosen under the blank check given in this bill.

I have said before and I say now that I do not think the bureaucrats in Washington are any more interested in the inmates of institutions in Alabama, South Carolina, Indiana, or any other State than are the people in those States.

The Governors of the Nation are opposed to this bill. The State attorneys general of this Nation are opposed to this bill. They have gone on record and recently in their spring meetings I understand they reaffirmed their position.

Mr. President, I want to say there are many reasons why this bill should not pass. How can the Federal Government look after its own institutions and also look after the institutions in all 50 States? The States themselves are sovereign entities. They have all the powers not delegated to the Union and they are responsible. The Governor of each State, the attorney general of each State, the head of the penal institution in each State, the head of the mental institution in each State, and the institutions affected by this bill, the heads of those agencies, again, I repeat, are more interested, in my judgment, in the people of their respective States than any outsider from Washington.

I think it is purely a political bill. I think it is a bill purely to try to attract votes of certain groups of people on the theory that a lot of people are being discriminated against and not being treated fairly. There are bound to be some isolated cases. You could probably go into any State and find a case where there may be some merit. That does not give the Federal Government cause to reach down into the State and try to run State institutions of all States of the Nation.

Mr. President, in the first place, I think the Federal Government ought to clean up its own institutions before it tells the States that, "We are going to run your institutions."

I want to present to the Senate today a staff study of the U.S. Penitentiary in Atlanta, Ga. The Permanent Subcommittee on Investigations of the Committee on Governmental Affairs of the U.S. Senate made this investigation. This report is dated January 1980.

I want to show by this report that the Federal Government is not capable or at least it is not properly operating its own institutions. Before they tell the States about their institutions and try to correct conditions in State institutions, they had first best clean up their own backyard.

Mr. President, this report is addressed to all members of the Permanent Subcommittee on Investigations and is from Senator SAM NUNN, chairman, and CHARLES PERCY, ranking minority member.

There you have Senator NUNN as a Democrat and you have Senator PERCY as a Republican. They had no bias, I am sure, about this matter. They merely state the result of the investigation of the Atlanta Penitentiary. Atlanta is located in the State of Georgia. Senator NUNN is one of Georgia's Senators. I am sure he would not wish to discredit a Federal institution in his State unless for just cause.

Now this is what is in the report. The subject is Staff Study of the U.S. Penitentiary, Atlanta, Ga.:

In response to information from multiple sources, the Permanent Subcommittee on Investigations conducted a year long investigation into the U.S. Penitentiary at Atlanta, Ga.

I especially want to call the next statement to the attention of the Senate. Continuing:

The inquiry found that the Atlanta Penitentiary has become the setting for violent inmate murders, extensive narcotics trafficking, and various other criminal activities.

Now, Mr. President, I will continue in a minute, but I want to comment for a minute. If this Federal penitentiary is allowing, as Senator NUNN and Senator PERCY say, "Violent inmate murders, extensive narcotics trafficking and various other criminal activities," why does not the Federal Government clean up this penitentiary? Why does it not look after its own institutions first instead of urg-

ing a new law passed to exert Federal control over State institutions in Alabama, South Carolina, Indiana, and all other States? I continue reading:

After a preliminary investigation, the subcommittee conducted hearings in Atlanta on September 29 and October 2, 1978. This staff study summarizes the testimony received at those hearings and a subsequent staff inquiry.

The Atlanta Penitentiary has an inmate population of 1,300 adults, is a maximum security prison, and houses the largest prison industry in the United States.

Mr. President, again I want to interpolate here. Here we have the largest prison industry in the United States—1,300 adults. Let us see what happens:

Both inmates and employees of this institution testified at the hearings in Atlanta. In addition, the staff interviewed a cross section of witnesses, drawn from the subcommittee investigation and suggestions from the Director of the Bureau of Prisons.

Atlanta Penitentiary inmates testified to the availability of narcotics, alcohol, and weapons in the prison. Knives could be readily produced in the prison industry and could be hidden throughout the prison due to lax security measures. Violence and narcotics trafficking were common events. Many inmates testified that involvement in such activities was virtually impossible to avoid. The Atlanta facility was described by some inmates as a "country club" or like "being on the outside."

Mr. President, here we are considering a bill proposed to be enacted by the Congress, which would give the Federal Government the right to investigate and, use the judgment of bureaucrats to rectify conditions in the State institutions. Here is what is happening in one Federal institution.

I want to repeat:

It is clear here that narcotics, alcohol and weapons according to the unrefuted evidence, were available in the Federal penitentiary in Atlanta.

What kind of penitentiary was it? Was it a State institution? No. A county institution? No. A city institution? No. What kind, then? A Federal institution. A Federal institution, I repeat. If the Justice Department cannot control one of its own institutions under its jurisdiction better than that, how can the Justice Department go throughout the United States and control every penal and mental institution, and other institutions, in the various States of the Nation?

Mr. President, I will go on reading this report of Senator NUNN and Senator PERCY:

The major drug of abuse within the facility is marijuana. Prison inmates testified that the primary source of this drug was through the prison employees. The employees would make "connections" within the prison and bring the marijuana in from the outside. Heroin and cocaine were generally smuggled in by friends and relatives at visiting times.

Prison employees testified to the lack of security within the Atlanta Penitentiary. One witness candidly presented how he had been corrupted by prison inmates and served as a messenger and banker for them. He resigned from the institution after his public testimony to the subcommittee. One employee indicated that the prison administration encouraged employees to overlook illegal activities among inmates in order to keep the prison population under control. Others expressed fear for their safety if they were to "crack down" on the inmates.

Mr. President, I want to interpolate here. Is a Federal institution like the Atlanta Penitentiary going to encourage employees to overlook illegal activities? This is a Federal penitentiary and here they are encouraging, according to Senator NUNN and Senator PERCY, the employees to overlook illegal activities.

Well, if they are going to operate institutions like that, Mr. President, do you think they are justified in trying to tell the States how to operate their institutions? I dare say the States do not use the Federal penitentiary in Atlanta as a model. There may be problems here and there, but they are not of such a scale as exists in the Atlanta Penitentiary, which is operated by the Federal Government.

Next mentioned in the report:

Others expressed fear for their safety if they were to "crack down."

The employees are afraid to crack down. They are afraid to enforce the law. They are afraid to do their duty. Where is that happening? In a Federal penitentiary, a Federal institution.

The Justice Department, again I say, should clean up its own back yard. The Federal Government must look after its own institutions first before trying to tell the States what to do.

(Mr. MORGAN assumed the chair.)

Mr. THURMOND. To continue:

In response to the many criticisms of the Atlanta Penitentiary revealed in the Subcommittee investigation, the prison administration instituted several major changes in prison management. These were:

(1) The establishment of a pass and controlled movement system;

(2) More frequent daily searches to reduce availability of weapons and narcotics;

(3) Installation of metal detectors between cell blocks and shop areas;

(4) Increased supervision of inmate living areas; and

(5) Inmate relocation so that only level V inmates are to be located at the Atlanta facility.

At the close of the hearings in Atlanta, it was suggested that there be continuing oversight of the Atlanta Penitentiary by the subcommittee. Subcommittee staff monitored the results of the major changes in security measures instituted by the prison administration.

Despite efforts to increase security, the staff found that there has been no significant change in the amount of violence and narcotics flow within the institution. In the staff's opinion, the Atlanta Penitentiary is too large and too old to enable prison officials to manage a prison population in a safe and efficient way. It was estimated that it would cost up to $44 million to renovate the Atlanta Penitentiary so that it is in compliance with the minimum standards of a modern correctional facility. Consequently, the staff recommends that the penitentiary be closed as soon as feasible but not later than 1984. Closure of the prison also has been suggested by the House Judiciary Committee and the Bureau of Prisons.

The staff recommends that in developing a plan to close the Atlanta facility by 1984, the Attorney General should consider the profound effect the closure will have on prison employees and the community at large. While it must be assured that the transition will not present undue burdens to the persons involved, it is clear that closure of the prison is a necessary though difficult step toward the development of a modern and respectable correctional facility.

Mr. President, here is an example of a Federal institution in such poor shape and so lacking in discipline it did not meet the standards of a modern correctional institution—in fact, it was in such bad shape that the subcommittee recommended it be closed entirely.

That is a Federal institution, under the Department of Justice. Yet the Department of Justice comes in now and wants us to give them the authority to go out and supervise all institutions in all the 50 States of the Nation—mental institutions, penal institutions, and other categories. Mr. President, I say if the Federal Government cannot do a better job with its own institutions, how can they undertake the responsibility for institutions in all 50 States of the Nation?

I want to go into this Atlanta Penitentiary in a little more depth, because I think if the Senate is convinced that the Federal Government, through the Department of Justice, cannot handle an institution like the Atlanta Penitentiary, then it certainly should not let it take on obligations in all the States of the Nation. To continue:

The U.S. Penitentiary at Atlanta is located on 162 acres in Atlanta, Ga. This huge institution was built between 1900 and 1902 with an inmate capacity of 1,500. Currently, it houses some 1,300 adults, many of whom are repeat offenders and are serving long prison sentences. Although the inmate population has been reduced from a high of 2,300 in September 1977 to 1,300 in November 1979, it is still more than double the recommended maximum population for modern correctional institutions. This maximum security prison also operates the largest prison industry in this country. Efforts to control violence and narcotics flow in the Atlanta Penitentiary are hindered by its size, age, and overcrowding. Hence, the Atlanta Penitentiary has become the setting for violent inmate murders, extensive narcotics trafficking, and various other criminal activities.

Conditions at the U.S. Penitentiary in Altanta came to the attention of the Permanent Subcommittee on Investigations in 1978 during the course of an authorized inquiry into organized criminal activity in south Florida. Testimony was received from a former inmate which indicated that there were distinctions in the nature of incarceration of known organized crime figures at the penitentiary, compared to the less desirable status of ordinary inmates; that the smuggling of narcotics and other contraband was relatively easy; that there was ready access to tools and stock for the manufacture of "homemade" weapons. In addition, the witness testified as to his personal involvement or knowledge of five homicides that occurred within the prison.

Mr. President, I want to pause here to say that here is a Federal institution in which they have had five homicides in recent years, under the Federal Government, under the Department of Justice. Yet the Justice Department comes in and says, "Give us supervision over all the institutions in all 50 States," when

they cannot control their own institutions. Continuing:

The witness, Gary Bowdach, was serving a 15-year Federal sentence as a dangerous special offender for firearms violations and extortionate extensions of credit (loansharking) when he was brought to the attention of the subcommittee by the Department of Justice Organized Crime and Racketeering Strike Force in Miami, Fla. Bowdach had been incarcerated in the Atlanta Penitentiary on two occasions for a total of 5 years between 1971 and 1977. He testified at public hearings held by the subcommittee on August 1, 2, 3, 9, and 10, 1978.

Mr. President, I hope the Senators are listening on their devices back in their offices and will listen to what has happened in the Atlanta Penitentiary. According to Bowdach, who was an inmate there, he says:

A laxity on the part of the prison administration and its lack of understanding of the nature, scope, and magnitude of inmate activity made it relatively easy for inmates to engage in illegal activity ranging from narcotics smuggling to murder. He also attributed such illegal activities to ignorance and indifference on the part of officers that were on duty in the visiting room, and he flatly stated that some prison guards were corrupt.

Mr. President, I want to repeat this one paragraph. According to this witness, Bowdach, there was "a laxity on the part of the prison administration." Laxity? Well, if they are going to be lax in handling their own institutions, how can they properly tell other people in the States of the Nation how to run their institutions?

"And its lack of knowledge of the nature, scope, and magnitude of inmate activity"—in other words, it seems the authorities did not know what was going on there.

Then he goes on to say that this made it relatively easy for inmates to engage in illegal activity, ranging from narcotics smuggling to murder.

He also attributed such illegal activities to ignorance and indifference.

Mr. President, if the Federal Government, according to a witness who testified at this hearing and whose evidence Senator NUNN and Senator PERCY accepted, makes the statement that the officers in this institution, a Federal insitution, were ignorant and indifferent with regard to their duty and flatly stated that some prison guards were corrupt, how again—I repeat, how—can the Federal Government say to others, "We want to supervise your institutions, although ours are corrupt, although we have narcotics smuggling, we have narcotics used by inmates, we have murders committed, we have alcoholism, we have all this crime in this Federal institution? Although all of this is going on under the Justice Department, yet the Justice Department says it wants supervision over all the institutions in the States of the Nation. Mr. President, it simply does not make sense. In the first place, they have serious problems in their own institutions, they have not set a good example for the States of the Nation.

In the second place, it would be impossible for the Justice Department to properly supervise all the institutions in the States of the Nation.

In the third place, they have no constitutional authority to do so, if they did have the personnel to do it and if they could do it.

They are taking away the rights of the States and injecting themselves into the responsibilities which belong to the States under the Constitution of the United States. To continue:

In light of these allegations, Senator Sam Nunn, chairman of the subcommittee, directed the staff to pursue an investigation of the Atlanta Penitentiary in order to evaluate the adequacy of the facility and the effectiveness of the Bureau of Prisons in maximizing offender security. This investigation culminated in public hearings conducted in Atlanta on September 29 and October 2, 1978. The testimony received at those hearings is summarized herein.

This report was made by Senators NUNN and PERCY, members of the Permanent Subcommittee on Investigations.

These are the Atlanta hearings:

The subcommittee's hearings in Atlanta were designed to explore the allegations concerning civilian employee corruption and narcotics and weapons availability at the U.S. penitentiary in that city.

During the course of the investigation, the subcommittee received information from scores of inmates, employees, and individuals interested in events and inmate treatment at the institution. However, public presentation of information was limited to those individuals who could testify to their own involvement in the events. The focus was on a small group of employees who may have been involved in corrupt activities, as well as on the question of inmate management and security.

Again, inmate management and security, going to the management of the institution under the Department of Justice:

Prior to the hearings, the Director of the Bureau of Prisons, Norman Carlson, had requested Senator Nunn to have the subcommittee's staff interview a "cross section" of inmates specifically selected by the Bureau, since the BOP was concerned that the staff had interviewed, over the course of several months, numerous past and present selected inmates who often were critical of the institution and its administration. The staff interviewed eight of the nine inmates selected by the Bureau, and F. Keith Adkinson, an assistant counsel to the subcommittee, summarized those interviews in his testimony at the Atlanta hearings:

One inmate was not available. All of the eight categorically took exception to the proposition that every inmate has a knife. Although each of these concede a lethal weapon of some sort would be available to any inmate bent on murdering another inmate, many stated weapons are readily available.

Mr. President, can we imagine in a Federal institution, a Federal penitentiary, where people are incarcerated against their will, being put in a place where he says inmates—I want to repeat this:

concede a lethal weapon of some sort would be available to any inmate bent on murdering another inmate, many stated weapons are readily available.

That is the kind of situation we have in the Atlanta Penitentiary. That is the kind of situation we have in an institution that is run by the Justice Department. This department is now asking to take over the supervision of all institutions in the Nation.

I will continue:

Three of the seven who had been in other Federal and State institutions categorically stated Atlanta is more desirable, from their points of view, than any of the other institutions where they had been inmates. Their reasons ranged from prisoner mobility to the ability to be alone. One, who had been in Marion, observed that coming to Atlanta was like "going out on the street" compared to Marion.

While only one expressed no particular concern for his personal safety at Atlanta, two others expressed abject fear for their personal safety. One inmate agreed with Bowdach that it is a "country club" but only for those inmates who are strong and run with a strong group, but sheer "hell" for a loner, such as himself. This inmate's main fear is that he will see something he should not see and be threatened or harmed as a result.

Mr. President, can we imagine a man put in an institution, placed there, where he did not want to go, and being subjected to such fear?

He continues:

that it is a "country club" but only for those inmates who are strong and run with a strong group, but sheer "hell" for a loner, such as himself.

In other words, the fellow who may wish to read books, or try to develop himself so when he gets out he can pursue some occupation or vocation, to improve himself and make a living for himself and family, says it is actually dangerous for him to do it. But it is a country club for the others, the strong group, and those who undoubtedly had the weapons and had their way in the prison.

Continuing:

Half raised miscellaneous complaints concerning adequate medical care and the competence of case workers.

Regarding narcotics, one of the eight feels there is "enough marihuana in the institution to supply all of Atlanta"—an obvious overstatement, to make his point. That same inmate is unaware of heroin availability.

In other words, he says there is enough marihuana in the Atlanta penitentiary to supply all of Atlanta.

Who runs the institution? The Justice Department. And what do they want to do? They want to take over the supervision of all the institutions in all 50 States of the Nation.

Continuing:

Three inmates felt drugs are not a major problem. Only one inmate said heroin and other hard drugs are readily available. Half felt homebrew is readily available.

Home brew readily available in this country club in Atlanta, known as the Atlanta Penitentiary. I continue:

In summary, this cross section suggests to us that the U.S. Penitentiary in Atlanta is rather like a microcosm of an urban area, with narcotics available to certain groups; knives available to certain groups; and homebrew available to certain groups. Most felt these groups and these problems could generally be avoided. None had seen a gun in the institution or believed them to be there.

After the brief staff summary of their interviews with inmates, the subcommittee turned its attention to the firsthand accounts of conditions in the penitentiary. The first inmate witness called before the subcommittee was Jewell Wesley Walters.

JEWELL WESLEY WALTERS

J. W. Walters was in the U.S. Penitentiary in Atlanta from April 1969, until February 1970, and again between February 1975 and October 1976. Walters was transferred to the Marion institution where he remained between 1970 and February 1975. In October 1976, he was transferred from Atlanta to the Butner, N.C. facility. From there he was transferred to the U.S. Penitentiary in Lewisburg.

Walters is serving a total of 38 years: 20 years for bank robbery; 10 years for assaulting a U.S. marshal; 5 years for escape; and 3 years for threatening a Federal judge. He contacted Senator Nunn by letter dated September 11, 1978, wherein he indicated he had firsthand information concerning the November 1975 murder of Francis Klien and criminal misconduct of civilian employees. He perceived his knowledge of the Klien murder jeopardized his security and he offered to cooperate with the subcommittee investigators.

In his testimony, Walters described how he observed Bobby Meyers remove a large knife from Meyers' locker in the prison industries area. He further described observing and having contact with Meyers near the scene of Klien's murder and at the time of the assault. In subsequent discussions, Meyers allegedly admitted to Walters that he had robbed and murdered Klien. He further stated that he had a knife, which he kept in his cell while in Atlanta, similar to the one he saw Meyers remove from his locker.

Walters, who said knives were "about as plentiful as dope," stated that the main source of knives was prison industries.

During the course of Walters' testimony, Senator Nunn asked him the following question: "Did you worry about getting caught with a knife?" Mr. Walters responded: "I would rather get caught with it than without it."

Walters also provided testimony concerning his personal involvement in narcotics transactions with two prison employees: John Carroll and Ervin "Blue" Elswick. Walters, who testified he was distributing heroin in the penitentiary for Atlanta inmate Frank Coppola, testified that on six or eight occasions Mr. Carroll, who worked in the food service area, brought heroin into the institution for him and Coppola. On "two or three" other occasions, according to Walters, Ervin "Blue" Elswick, a recreation officer, smuggled powdered Dilaudin (a heroin substitute) into the penitentiary for inmate Foster Sellers. Walters said he distributed the narcotics for Coppola and Sellers to roughly 200 to 300 regular inmate customers, generating $10,000 to $15,000 per week.

Mr. President, is it not astonishing, is it not surprising, that in a Federal institution, under the supervision of the Justice Department, an inmate said that he was able to and did distribute narcotics to between 200 and 300 regular customers, generating $10,000 to $15,000 per week? That is in a Federal jurisdiction, under the Justice Department, the Department that is now asking authority to supervise all the institutions in all the States.

In comparing the availability of narcotics and weapons at Atlanta to the other Federal facilities where he has been incarcerated, Walters stated that the Atlanta Penitentiary was "No. 1".

In response to Senator Nunn's question as to what steps, if any, can be taken to improve the situation in the Atlanta Penitentiary, Walters focused upon the civilian employees who, according to him, were bringing in 95 percent of the narcotics.

Mr. President, is it not difficult to believe that in a Federal penitentiary, the officials would allow the civilian employees to bring in narcotics to the inmates? This witness knew about it, he participated in it, he distributed narcotics, and he says that 95 percent of the narcotics are brought in by the employees.

To Walters, there are only two ways to curb employee smuggling: Searching, on a daily basis, each officer as he enters the institution; or administering polygraph examinations to the staff every 2 or 3 months.

To curb the ready availability of weapons, Walters had a very straightforward solution:

". . . take all the convicts out of the machine shops, put free personnel [civilian employees] in there."

Regarding press reports that metal detectors were being installed, Walters observed:

". . . they ain't doing nothing but wasting the taxpayers money."

Wasting the taxpayers' money. Where does that come from? A Federal penitentiary, a Federal institution. Further:

According to Walters, "where there is a will there is a way" and the inmates would find a way to circumvent the metal detectors.

In response to a question from minority counsel, Joseph Block, Walters stressed that it was virtually impossible for inmates to avoid involvement in criminal activity in the Atlanta Penitentiary. Avoidance of violence and narcotics flow could only be achieved if the inmate remained isolated from fellow inmates. Walters said that this is largely due to the ability of inmates to freely roam the facility.

Who allows them to roam? The officials in charge allow them to roam. What institution are they in? A Federal institution, the penitentiary in Atlanta. Continuing:

He testified that he spent only an average of 10 to 15 minutes at his job in the prison industry. He then would leave and was never checked upon. Walters speculated that the size of the Atlanta facility made it impossible to curb criminal activity. Mr. Block asked if the production of weapons could be reduced by putting more officers in the industry area. Walters pointed out that industry personnel were required to observe prisoners on the jobsite but were rarely there.

In other words, those charged with observing the prisoners, according to this witness, were rarely looking after their jobs, and the prisoners could walk from their jobs. I continue reading:

In a telling observation regarding inmate life inside the walls at Atlanta, Walters stated:

I wouldn't go so far as to say it was a country club, but it was nice; you know, considering.

* * * * *

I eat steaks plenty at night, drink hard liquor, shoot all the dope I wanted to shoot, do about anything I wanted to do. The only thing I missed was women.

Mr. President, here is a man in a Federal penitentiary which is operated under the Justice Department who says that in that penitentiary, he eats steaks at night, all he wants; he drinks hard liquor; he shoots all the dope he wants. If those who run institutions of that kind operate them in such a manner, should we give them any supervision or the right to investigate the institutions in all the States of this Nation? I say, "No!" They cannot look after their own institutions properly.

Here is another witness, Truman Fagg:

The second inmate to testify in the Atlanta hearings was Truman Duane Fagg, who is serving a 45-year sentence for bank robbery and post office robbery. Fagg was incarcerated at the Atlanta Penitentiary from November 1974 to April 1978, when he was transferred to the U.S. Penitentiary in Leavenworth. Prior to his current conviction, Fagg was convicted on State and Federal charges. He was incarcerated at Leavenworth on a previous conviction from 1965 to 1972.

In his testimony, Fagg described his narcotics transactions with "Blue" Elswick. Between November 1977, and approximately the end of January 1978, Fagg testified that Elswick smuggled marihuana into the penitentiary for Fagg on four or five different occasions. According to Fagg, on one such occasion Elswick also smuggled "speed" pills into the facility. On other occasions, Fagg said Elswick smuggled radios for him. In each instance of narcotics smuggling, Fagg said he would be approached by other inmates who had narcotics on the outside. The other inmates were aware of Fagg's relationship with a civilian employee (Elswick) and they would ask Fagg to determine the employee's willingness to bring in the contraband.

According to Fagg, if he received an affirmative response from Elswick, he would give the inmate the address of an outside drop point to pass along to his outside contact. The outside contact would then arrange for the narcotics to be left at the designated spot where Elswick would pick it up. In all but one instance Fagg testified Elswick demanded that the inmate "front" his "fee" before the transaction took place. Elswick's fee was based upon his rate of $400 per pound of marihuana and $1 per pill. During the course of these transactions, most of which were for one pound quantities of marihuana, Elswick increased his fee to $500 per pound.

Fagg testified that, on two occasions, Elswick handled the narcotics directly. On other occasions, the narcotics were left in a specially modified amplifier in the recreation shack where Fagg worked.

In comparing the Atlanta Penitentiary with the Leavenworth Penitentiary, Fagg testified:

Most of the staff, I thought at Atlanta, were very sloppy and didn't seem to care what really went on. Over at Leavenworth, they keep a close eye on you, you are on the job someplace, the man is right near the area, or has somebody else watching you.

In the opinion of Fagg, the number of weapons in Atlanta exceeded tenfold the weapons at Leavenworth; narcotics at Atlanta exceeded twentyfold the narcotics availability at Leavenworth; and incidents of homosexuality were four to five times more prevalent at the Atlanta facility.

When asked what steps could be taken to curb narcotics availability in the Atlanta penitentiary, Fagg replied that the prison administration—Mr. President, I want the Senate to hear this statement.

When this witness, who is an inmate there, was asked what steps could be taken to curb narcotics availability in the Atlanta penitentiary he replied that the prison administration either had to "change a great deal of the employees" or "have shakedowns of the employees coming in at various times without any warning."

That shows that the operation of this penitentiary was at a low ebb. It was run in a lax manner. That shows that the inmates were allowed to do things that no one could conceive would happen in a Federal penitentiary.

And who is this under? The Justice Department.

And who is trying to take over the investigation of all the institutions in the whole Nation, penal institutions, mental institutions, and others? The Justice Department. They want more power.

There are too many people in the Federal Government today who have too much bureaucratic power, but they are still not satisfied. They are clamoring to go further and further with the long arm of the Federal Government not only down in their own institutions but in the institutions of the States of the Nation.

No wonder the Governors of the States of the Nation are against this bill. No wonder the attorneys general of the States of the Nation are against this bill. Every Senator in this body who regards State sovereignty and appreciates the rights of the States under the Constitution should rise up and oppose this bill.

Continuing:

With respect to curbing the availability of weapons, Fagg, echoing the administration position, testified:

I don't really think there is too much to be done about it, even fencing off the areas where they can be made or anything else. There are too many other things you can make weapons out of. I think if somebody really wants to kill in one of these places, they can do it.

Mr. President, why can they do it? It is because they do not have proper supervision and steps are not taken to properly operate an institution of this kind. Continuing:

Minority counsel questioned Fagg concerning ability of inmates to avoid narcotics, weapons, and violence. Fagg stressed that the inmate's freedom to wander throughout the facility increases the chance of involvement in criminal activity. He noted that at Leavenworth he was not allowed to avoid work or to roam the facility without a pass.

Another witness who testified down at this hearing was Joe Louis Denson. I continue reading:

The most significant and enlightening testimony of current conditions within the penitentiary was elicited from Joe Louis Denson, an inmate at the institution until the time of the hearings. Denson was one of the inmates that Director Carlson requested the subcommitee staff interview for the purpose of obtaining a balanced perspective of inmate living conditions.

Denson was first interviewed by staff at the institution on Wednesday, September 27, 1978. Immediately prior to the interview, staff reviewed Mr. Denson's multivolume central prison file and noted Denson's wide experience in the Federal prison system. He had served time at the Federal Reformatory, El Reno, Calif., and the penitentiaries at Terre Haute, Ind.; Leavenworth, Kans.; Marion, Ill.; and Atlanta, Ga. He also had served time in the Kansas State Penitentiary.

According to Denson's file, he, as well as Frank Coppola, whose activities were described in earlier testimony by J. W. Walters, were persistent and significant drug traffickers in the penitentiary. It included the following statement by Atlanta prison officials:

We have received the material on Denson. We are well acquainted with Densons (sic) persistent habits of drug pushing, assault, and other deeds.

Mr. Denson is currently serving a life sentence for murder. This offense occurred at the U.S. Penitentiary in Leavenworth.

For some time Denson has been under suspicion of being the ringleader of a narcotics ring at our institution (Marion). As noted in the progress report on September, 1975, he was charged with possession of narcotics paraphernalia.

Additionally, his file revealed numerous reports pertaining to his assaultive nature, his narcotics activities, and various other misdeeds.

In the staff interview on September 27, Denson, in comparing the Atlanta Penitentiary to the one at Marion, said coming to Atlanta was comparable to "going out on the street." Denson also indicated, albeit in generalities, that he was currently running gambling and narcotics distribution operations in Atlanta.

In response to staff inquiries, Denson indicated a general willingness to talk further with staff and provide specific information regarding the narcotics activities in which he had been involved while incarcerated at Atlanta. Because of the immediate value of this information, which was enhanced by its current status, arrangements were made by subcommittee staff for an indepth interview of Denson on Saturday, September 30, at the office of the U.S. marshal in Atlanta.

A unique and unlikely set of circumstances resulted in an extremely informative second interview. On Wednesday evening, after the initial staff interview, Denson was advised that his mother, to whom he was very devoted and for whose financial support he allegedly performed many of his illegal activities, died of cancer. On Saturday morning, immediately prior to his scheduled removal from the penitentiary for the indepth interview with staff, two inmates, wearing masks, assaulted Denson in the stairway of the cell block. One man was armed with a knife, the other with a piece of pipe or wood. Denson, however, was not injured.

The information Denson shared with staff was so significant that it was immediately called to the attention of Senator Nunn, who convened an executive session of the subcommittee at 9:30 Sunday morning, October 1, for the purpose of obtaining Denson's testimony under oath. At this time, Denson provided testimony on his narcotics dealings with Carroll and Elswick, who had already been the subject of public testimony in the hearings on the preceding Friday. Denson also supplied information on three additional employees at the penitentiary whom he had reason to believe were involved in narcotics smuggling activities. Finally, Denson provided a detailed eyewitness account of the murder of Vincent Papa.

Denson's testimony in executive session was such that a determination was made to have him appear as the first witness on Monday, October 2.

In his public testimony, Denson, who is 37 years old, chronicled his criminal background which has resulted in him spending the previous 15 years (with only a 2-week interval when he was released on bond) in various prisons for convictions including possession of a sawed-off shotgun, second-degree burglary, grand larceny, interstate shipment of a stolen vehicle and second-degree murder.

After describing the circumstances of the assault upon him the previous Saturday, Denson related his firsthand knowledge of, and involvement in, narcotics transactions with Messrs. Elswick and Carroll, Denson stated that he was present when inmates Mike Schapolino and Junior Brown, in separate transactions, picked up a pound of marihuana from Elswick. Additionally, Denson testified that John Carroll delivered directly to him, in separate transactions, 16 1-ounce bags of marihuana secreted in an ice bucket; 1 ounce of heroin and 1 ounce of cocaine; and another pound of marihuana, also secreted in an icebucket. According to Denson, all three transactions were for other inmates, and, in each instance, Denson received a portion of the narcotics for his role.

The portrait that emerged in Denson's testimony was that of a physically strong, emotionally stable inmate being employed by other inmates to pick up and, on occasion, distribute their narcotics. For example, in the case of the heroin/cocaine transaction with Carroll, Denson said he (Denson) received, for his efforts, one-third of the heroin.

Senator Nunn pursued with Denson the magnitude of the narcotics problem in the penitentiary. Denson testified that, in his opinion, more than 90 percent of the inmate population is using some form of narcotics.

Mr. President, I want to say here that, I have previously brought out that, another witness said in his opinion 95 percent were using narcotics. This witness says more than 90 percent were using narcotics. Where were they using narcotics? In a Federal institution, a Federal institution under the Justice Department. This is the kind of direction the Justice Department is giving to the institutions under its care? Reading further:

Denson went on to estimate that 95 percent of the marihuana comes in through prison personnel, while most of the heroin and cocaine, in his opinion, comes through the visiting room.

In the area of weapons availability, Denson stated that "almost everybody" has a weapon—"if a man wanted a weapon, needed one, he could find one just almost any time he wished". He went on to say there is no way to prevent weapons manufacturing because of the dependence upon inmate labor to work in the prison industry. He related making his last knife by putting sandpaper on the shaft of a loom to create a grinder which he used to fashion a knife from a piece of scrap metal.

Mr. President, if this man had had proper supervision why was he allowed to make knives there? Why were others allowed to make knives? This man says everybody had a knife, everybody who wanted one. If that is the kind of supervision the Justice Department gave to this institution, why do they want to take over the supervision of institutions in the States of the Nation, investigate them, when they have their hands full looking after their own Federal institutions? Continuing:

Denson stated it is his belief that most of the weapons come "out of the factory":

Not each and every inmate has a weapon. One guy may have one that he will let 15 or 20 other guys use; just ask him for it. It is like a community thing. If a guy has got 10 or 15 buddies, they don't need but one weapon. They are not all going to use it at

the same time, but if the situation occurs where four or five of them need a knife at the same time, to go do something, they could get it all, four or five of them could get it, but normally, it is just, they just need one knife for one kill, you know.

In a statement which provided a more expansive explanation of Bowdach's characterization of the Atlanta Penitentiary as a "country club," Denson, drawing upon his experience in numerous Federal penal institutions, testified:

The difference is like leaving Marion, coming to Atlanta, is just like going to the streets in the free world. That is the difference in the setup of each institution.

* * * * *

* * * It was just wide open. You can move around the way you want there. You can be involved with any type of people you want to be involved with; whatever you want to do, there is somebody there to do it with. It wasn't hard to find whatever you wanted to do.

But at Marion, it is just so close and it is just that there are not many guys in Marion as there are in Atlanta. Everybody knows everybody at Marion; and Atlanta, you can go just like going across town. If you want to get away from this group of people, just go across, go on the other side of the institution. You are away from it, you know.

To Denson, "anything anybody can do anywhere else in the Federal system you can do it at Atlanta."

Senator Nunn, who had toured the facility on Firday afternoon, September 30, and noted numerous significant changes made since the April 26 report of the Department of Justice investigative team, questioned Denson as to the significance of these changes, particularly the recently implemented pass and controlled-movement systems. In response, Denson, who was the only inmate witness currently in the institution and therefore the only witness who could provide a timely assessment of the changes, stated:

* * * Really that hasn't changed that much. It is just an inconvenience to you at certain times of day, but you can gear your activities to coincide with all of these passes and moves, and this and that, you know.

In other words, Mr. President, the investigators there back in April recommended changes and thought the changes would bring better results. But they went back again in September, and this witness said there had been little change. It was just an inconvenience to him, but they gear their activities to coincide with these passes and moves.

Another witness who testified was Michael McCurley, as follows:

Michael McCurley, now a Cobb County Sheriff's Department deputy, left the Atlanta Penitentiary in May 1978, after 2 years and 9 months as a guard. He said he left out of frustration—frustration over the "lack of discipline in the penitentiary."

McCurley, who prided himself on the successes he had at Atlanta seizing contraband, expressed dissatisfaction over the fact the administration apparently did not want him to do his job too well because, when he did, it resulted in inmate complaints. As a guard, he also was displeased that little significant action was taken against inmates caught with contraband.

Senator Chiles probed McCurley concerning specific incidents in which criminal activity was overlooked.

Mr. President, this was a man who was a guard in this Federal penitentiary, in this Federal institution, and later became a deputy sheriff in Cobb County. Continuing:

McCurley testified that a flow of liquor, drugs, weapons, and money goes overlooked by prison officials. He noted that employees were encouraged by prison administrators not to "harass" the inmates. Furthermore, McCurley said that many prison employees feared that inmates would seek revenge against them by calling inside "contracts" on them unless they overlooked the criminal activity.

Mr. President, that is what is going on in this Federal institution—the liquor, drugs, weapons, money, narcotics being distributed in this Federal institution under the Justice Department. They cannot even control the situation here in this institution but they want to take over the right to investigate and enforce their rules in the penal and criminal institutions and the mental institutions throughout this Nation. Continuing:

McCurley, in response to Senator Nunn's questions, agreed with Bowdach's characterization of the Atlanta Penitentiary as "a country club," at least insofar as inmate freedom is concerned. He further endorsed the accuracy of Denson's observations in his earlier testimony. McCurley testified that he personally believes weapons are available to any inmates who want them, as are narcotics. To curb weapon availability, he felt the mill should be closed. However, as to narcotics, he testified that, in his opinion, an immediate halt in narcotics availability would result in "a full-scale riot".

Mr. President, this should be startling to the people of America, a Federal institution, a Federal penitentiary, in which a man who worked as a guard make such statements. He worked as a guard. He knew what was going on. And he testified that he believed that weapons are available to any inmates who want them, as are narcotics; weapons and narcotics available to the inmates who want them. He also said that an immediate halt in narcotics availability would result in a full-scale riot.

In other words, the inmates, if they cannot get narcotics, are going to riot. This is a Federal penitentiary where you are supposed to have discipline, where you are supposed to have control of people, and where you are supposed to have an institution that is an example for the institutions in the Nation.

And that is under the Justice Department, Mr. President, do not forget, the Department that wants to take over the supervision and investigation of the penal and mental institutions and other institutions in the States. Continuing:

To McCurley, the main cause of the problems he observed in the Atlanta facility were administrative:

One of the reasons for the pressure on the officers was the lax administration of the penitentiary. * * * the lack of inmate control is the direct result of a shared management of the institution. The Atlanta Penitentiary is run by the warden and a committee of 2,000 inmates.

In addition to McCurley, who, according to his employment records, had an unblemished record while employed at the institution, the subcommittee staff interviewed other civilian employees against whom allegations of criminal misconduct surfaced during the course of the subcommittee's inquiry. Ervin "Blue" Elswick and John Carroll, two prison employees against whom such allegations were publicly made by Gary Bowdach, Truman Fagg, J. W. Walters, and Joe Louis Denson, were subpenaed to appear before the subcommittee on Friday, September 29.

John Carroll repeatedly denied any wrongdoing. Carroll, who is 46 years old, retired from the Air Force in 1971. He had been employed at the Atlanta Penitentiary for approximately 5 years at the time of his testimony. Carroll testified that he knew Frank Coppola only casually and denied that Coppola, or anyone else, sent narcotics to him through the mail. He did state that, on one occasion, Coppola, approached him to bring "something" in, which he suspected was heroin, but that he had refused. However, he acknowledged that he had failed to report this request by Coppola as required by prison regulations.

Carroll testified he did not know J. W. Walters. He further stated he never brought heroin, marihuana, money or any other contraband into the Atlanta facility.

Elswick exercised his fifth amendment right against self-incrimination and, other than providing limited background information on himself, did not testify.

In other words, Mr. President, this witness, who served as a guard in the Atlanta Penitentiary and later became a deputy sheriff in Cobb County, said that this institution is run by who? The Warden alone? No. The warden and 2,000 inmates.

In other words, the inmates who were put there for disciplinary purposes are running the institution, along with the warden.

Mr. President, we have other employee testimony that came out in this hearing in this report by Senator NUNN and Senator PERCY, as follows:

On the other hand, Euros Knight, recreation specialist and former custodial officer, confessed to numerous violations and in so doing presented a graphic discription of how civilian employees are corrupted by inmates. Knight described how he was enticed into performing favors for inmates William Jackson and Leslie Atkinson, bringing in "envelopes, notes, information, sometimes money" which he regularly picked up from the law offices of two Atlanta attorneys. Knight described serving as a personal banker for these inmates, delivering a total of approximately $10,000 to Atkinson alone. Knight, who admitted receiving between $3,500 to $4,000 for his services, cooperated completely with subcommittee investigators after an initial period of reluctance. He resigned his position in the institution immediately after his public testimony before the subcommittee.

Edward Goodlett also cooperated fully with the subcommittee. Goodlett is a retired counselor at the penitentiary. After his retirement he continued to have regular access to the facility in his capacity as an employee and member of the board of directors of the Employees Club. In interviews with subcommittee staff, and in a sworn affidavit, he recounted numerous instances when he carried sealed, unmarked white envelopes to inmates Willie James and William Jackson. Goodlett's affidavit was read at the public hearing and included in the hearing record as exhibit No. 40 at page 439.

Additionally former masonry instructor Eugene Clark admitted in a sworn statement that he received gratuities from inmates at Atlanta in the form of a full-length leather coat, several shirts and $150 in cash. Clark maintained he performed no services for inmates in exchange for the gratuities. Clark resigned his position at the Atlanta Penitentiary shorty after he was interviewed by subcommittee staff and executed his affidavit.

All information developed by subcommittee staff in prehearing interviews, as well as

information developed in executive and public session testimony, was turned over to the U.S. attorney for the Northern District of Georgia for prosecutorial review.

WARDEN JACK HANBERRY AND REGIONAL ADMINISTRATOR GARY M'CUNE

On Monday, October 2, 1978, Jack Hanberry, warden of the Atlanta Penitentiary, and Gary McCune, Regional Administrator, U.S. Bureau of Prisons, were called before the subcommittee to respond to the questions raised by preceding witnesses.

Hanberry, who became warden at Atlanta in July 1977, began his testimony by describing the antiquated nature of the facility. He described his initial concern with conditions in the facility, a concern which prompted him to commission a task force in January 1978, to examine the institution's internal operations. The report, according to Hanberry, was forwarded to Director Norman Carlson who responded by sending an investigative team to review the Atlanta facility. The investigative team's report, dated April 26, 1978, made numerous recommendations. With regard to these recommendations, Warden Hanberry testified:

I am proud to report that we have completed or are in the process of implementing all of the recommendations which relate to the internal operations of the Atlanta Penitentiary.

Warden Hanberry summarized for the subcommittee the major steps taken to improve inmate accountability:

1. Establishment of a pass and controlled-movement system;

2. More frequent daily searches to reduce the availability of homemade weapons and narcotics;

3. Installation of metal detectors between the cell blocks and the shop areas; and

4. Increased supervision of inmate living areas.

With regard to the last point, the warden stated that in November 1979, he intends to implement the unit management system in the institution. The unit management system basically subdivides the population into smaller groups which are easier to manage, permanently assigning a team of counselors and caseworkers, headed by a unit manager, to each group.

In responding to the testimony of others regarding the availability of metal knives, primarily from the industry area, Warden Hanberry described and displayed nonmetallic items with lethal potential, including a sparerib bone, a broken broom handle, and a knife made out of Lexan, a plastic substance. None of these items, the warden said would be picked up by the metal detectors.

In addressing the criticism of previous witnesses regarding narcotics availability within the penitentiary, Warden Hanberry painted a rather dismal picture outlining the many opportunities for secreting narcotics into the facility:

1. Corrupt staff members, which can be expected with a staff of approximately 537;

2. Visiting room transfers, where contraband is often swallowed by inmates;

3. Mailroom deliveries;

4. Eighty-five to ninety inmates working outside of the institution on landscape details;

5. Shipments into the penitentiary, which ships and receives 3 million pounds of products through the industry area per month (approximately 5 rail boxcars and 25 trucks are in and out of the institution on a daily basis); and

6. Approximately 100 individuals from the city of Atlanta who enter the institution weekly as participants in volunteer programs.

According to the warden, even tennis balls hit out of the institution and thrown over the wall offer the opportunity for narcotics smuggling.

Warden Hanberry conceded that, given the many means by which smuggling can be accomplished, narcotics will continue to be a factor in the prison environment:

Though we do everything we possibly can to prevent, and no one wants to prevent it anymore than I do, there is always that possibility as I said in my opening statement, it is inherent in this kind of system because, in addition to many other things, there are a number of inmates who are drug dependent.

Warden Hanberry went on to explain the urine analysis program designed to identify heroin and other hard drug usage. Under the program, a minimum of 5 percent of the population is sampled each month on a random basis and without notice. In the year preceding his testimony, according to Mr. Hanberry, 1,208 inmates were tested and 31 were positive.

In response to earlier witness testimony critical of the inmate pass system at Atlanta, Hanberry stated that Atlanta had used a pass system until 1965, which was not reinstituted until April 25, 1978. Gary McCune had the following observations on that pass system:

I think it [the pass system] definitely is working but, again, it doesn't assure that an inmate cannot go into a given area or that it is impossible for him to do it. For example, when the controlled movements take place, he has a certain amount of time he may go to an area, but as soon as the movement is over, then we will know whether he is in the right area.

We are not saying it is a panacea to control all the problems. All we are saying is it does do a good job in controlling the movement within the fences.

One area in need of specific attention, and a recommendation made by the inmate witnesses, was the need for an adequate "shakedown" capability. Warren Hanberry had the following observations to make on this recommendation:

Nothing would please me more than to have a permanent shakedown crew of 10 or more people, but I have a certain staff of people and in order to maintain the operation of the institution, at the present time I cannot take any more staff away from any other function than we have already done in order to provide that kind of detail.

Regional Administrator McCune said shakedown crews would be used "* * * if we could afford them. * * *"

In concluding his testimony, McCune said the long-range objective of the Bureau of Prisons is to close the Atlanta Penitentiary. Mr. McCune said the costs of adequately remodeling Atlanta would be comparable to building two 500-inmate institutions. He noted, however, that closing Atlanta would result in the loss of the largest prison industries operation in the system—one which could not be replaced. However, on balance, Mr. McCune unhesitatingly made the following statement with regard to the future of the Atlanta Penitentiary: " * * * Yes. It should be closed. The sooner the better".

GENERAL ACCOUNTING OFFICE REVIEW

In addition to allegations concerning inmate accountability, civilian employee corruption, and weapons and narcotics availability, the subcommittee received allegations from an Atlanta inmate concerning fiscal mismanagement in the Department of Central Mechanical Services, where the inmate worked. That inmate, who testified in executive session in Atlanta on June 10, 1978, raised issues which indicated inadequate accounting procedures in the Central Mechanical Services Department.

As a result of this and similar allegations that staff received from civilian employees, Robert Taylor, Audit Manager in charge of the Bureau of Prisons review, and Fred Mayo and Paul Rhodes of the U.S. General Accounting Office, Regional Office in Atlanta, were detailed to the subcommittee for the month prior to the hearings to conduct a "limited review of certain expenditures of the Mechanical Service Department of the U.S. Penitentiary at Atlanta."

On Monday, October 2, 1978, the three GAO employees presented a brief overview of their findings. Taylor summarized the objective of the audit activity and their findings as follows:

"The objective of our survey was to learn whether the resources earmarked for the maintenance and rehabilitation of the Atlanta Penitentiary are adequately controlled and utilized in an effective, efficient, and economical manner. We examined the institution's and the regional office's compliance with applicable laws and regulations, accounting for property, use of accounting data to promote good management, and use of reports to disclose the information called for in the Bureau's policies.

"Because of the allegations that material purchased by the institution was being diverted to unauthorized, and sometimes personal, uses, we designed our audit to identify the weaknesses that do or can result in (A) significant waste, loss or extravagance in the management of property acquired with public funds; or (B) the inability of the institution to carry out its primary function of the custody, care, and correction of its inmates.

"We did not find evidence that material diverted from the institution. However, the records were incomplete, and activities were managed in such a way that material could be improperly diverted."

Taylor suggested that a more thorough audit was needed, noting that the "substantial flaws in the management system" extend to the regional office and are "common throughout the Bureau of Prisons system."

Mr. Taylor made it clear that they were not suggesting that regional office and penitentiary authorities "engaged in any illegal or improper activities resulting in their personal gain."

In addition to the limited fiscal review conducted by the team and presented by Mr. Taylor, at the request of staff, the auditors conducted a review of violent incidents from August 1975, to the end of September 1978.

These findings are summarized in the following chart:

AUGUST 1975-SEPTEMBER 1978—VIOLENT INCIDENT REPORT

Total year/months	Killings	Assaults	Fights	Total 1, 2, 3	Threatening	Weapons	Drugs
1975/5 mo	2	10	19	31	10	14	52
1976/11 mo	3	30	78	111	36	46	148
1977/12 mo	6	35	98	139	39	48	230
1978/9 mo	3	26	70	99	18	38	134

Mr. President, if anybody wants to know how a Federal institution is operated and whether it is operated with proper discipline and in a proper manner, all they have to do is read that chart. There you see that, in this Federal institution, in the years 1975–78, there were 14 killings, 14 killings in this Federal institution. Then we have 101 assaults, 265 fights, 103 threats, 146 weapons, and 564 drug incidents.

This is the type of management the Department of Justice employs in one of its own institutions. Over a 4-year period, as I have said, we see 14 killings taking place, numerous assaults, fights, threats and a large number of weapons

and drug incidents which run into the hundreds.

Mr. President, if the Department of Justice cannot operate one of its own institutions in a more efficient manner than this, why do they come to Congress and ask us to pass a law to give them the right to go down and investigate violations and make corrections in the institutions of the various States of the Nation? They are either grasping for more power, asking us to give them more power over the institutions of the States of the Nation, and the lives of the people—which I think is in violation of the Constitution—or they are completely inept and stupid in thinking they can look after all these institutions. If they cannot look after their own institutions any better than has been done in the Atlanta penitentiary, how can the Justice Department take on more responsibility?

Mr. President, to continue:

Fred Mayo, in commenting upon his findings, stated:

When examined on a monthly basis, the review of incident reports shows that there has been no significant change in the rate of violence during the period examined.

Therefore, it appears from a review of the reports that any measures adopted by penitentiary officials to control violence have not affected the number of reported incidents.

Although they investigated in April of 1978 and returned in September, there appeared to be little if any change in this Federal penitentiary. I repeat that statement. This is by Fred Mayo:

Therefore, it appears from a review of the reports that any measures adopted by penitentiary officials to control violence have not affected the number of reported incidents. However, reporting of incidents can be controlled to show either an increase or decrease simply by not preparing reports or by preparing more reports.

As a result of the preliminary findings of the audit team, Senator Nunn announced during the hearings that he was requesting the General Accounting Office to conduct a full review of the management practices of a number of penitentiaries. The Senator's letter, which is included as appendix B, requested a detailed GAO audit of a cross section of institutions including Atlanta, Ashland, Englewood, McNeil Island, and New York, together with the appropriate regional offices and headquarters departments. The Senator requested a careful examination of Bureau of Prisons management of its procurement, financial, property, services and personnel functions.

Senator Nunn, in summarizing the hearing, made the following comments:

In summary, three employees confessed to their misdeeds; one employee invoked his fifth amendment right and declined to give testimony; one employee declined any involvement; an account of a confession of murder was related; and, in executive session, an eyewitness account of a second murder was provided, along with the names of three additional employees whom this particular inmate suspects of bringing in contraband.

He went on to observe that the purpose of the hearings was fact-finding; the subcommittee "did not come to these hearings with any simple answers as to how the problems can be resolved * * *" (p. 553). Moreover, he added, "* * * we do not leave these hearings with simple answers as to their solutions."

He closed by expressing his concern, and the concern of Senator Chiles, who was present for the second day of the proceedings, that the problems raised by the preliminary GAO overview may "permeate the Bureau of Prisons" (p. 553). While Senator Nunn noted that he felt the problems were difficult and not capable of "quick, easy solutions" (p. 553) he expressed interest in developing solutions through "continuing oversight."

CONTINUING OVERSIGHT FACT-FINDING

With Senator Nunn's closing mandate, and at his direction, Keith Adkinson, assistant counsel to the subcommittee, and subcommittee investigator, Larry Finks, returned to the Atlanta Penitentiary on April 18 and 19, 1979, to assess the impact of changes implemented since the subcommittee hearings.

Staff began their oversight visit in a 4-hour interview with Warden Hanberry. The warden began by describing the changes made as a result of the subcommittee's investigation and hearings, changes which he said have improved inmate accountability.

IMPLEMENTATION OF UNIT MANAGEMENT SYSTEM

Warden Hanberry had mentioned, in discussions with the subcommittee staff in September 1978, his intention to move forward with a decentralization of inmate control which would divide the inmate population into smaller more manageable units. The decentralization involved the establishment of "unit managers" within each of the cell blocks. The concept is that caseworkers and other staff would be located in each of the cell blocks rather than in a separate area removed from the population as they had been. Under the system, each cell block has its own unit manager and caseworkers. Files for the inmates housed in that particular cell block are located contiguous to that unit. The purpose of the project is to develop a more personal relationship between the inmate and his caseworker and unit manager to overcome the stereotype of an inmate being merely a number. This project had been fully implemented as of April 1979. The implementation necessitated the creation of 23 new positions at Atlanta. The new positions were created and filled subsequent to the subcommittee's hearings.

While the presence of unit managers was criticized by certain inmates and civilian employees which the subcommittee staff interviewed (primarily on the basis that they tend to function as correctional officers in some instance rather than as counselors), it seems evident to staff that the system has definite merit and has been implemented reasonably rapidly and efficiently. Certain of the transition problems in its implementation will no doubt be corrected with the passage of time. Subcommittee staff believes the unit management approach is a definite step forward in providing additional personnel on cell blocks and in providing a more personal relationship with the inmates.

PERMANENT SHAKEDOWN CREWS

In November, shortly after the hearings, Warden Hanberry instituted a permanent "shakedown" crew to conduct surprise searches of prison areas for narcotics, weapons and other contraband. This group originally was to be comprised of six employees: two provided by new positions authorized by the Bureau of Prisons; two to be provided by the institution; and two to be obtained from Prison Industries. However, the Bureau of Prisons headquarters did not provide any additional personnel and the crews have been operating since November with four individuals. These individuals are rotated on a quarterly basis with the exception of one individual who remains in the group to provide continuity. The shakedown crew does nothing but conduct unannounced searches of various areas of the institution. These areas include the shop areas and individual cells. Those inmates thought to be narcotics users or distributors are subjected to unannounced shakedowns on a more frequent basis than the random shakedowns conducted periodically.

The unit, which went into operation on November 26, 1978, had, as of the April staff review, recovered some 20 knives, $2,000 in cash, narcotics, and narcotics paraphernalia. Most of the knives found were metal knives stolen from the cafeteria area.

Subsequent interviews with inmates and correction officers involved in the shakedown operation suggest to staff that it is having a significant deterrent effect.

CONTROLLED MOVEMENT

Since the subcommittee hearings, the employment of the pass system has been complemented by a regulated movement of inmates. Inmates are only allowed to move without passes for a 10-minute period at the end of each hour. During these movement times, inmates can relocate from one area to another. However, the inmate must be in an authorized area during the period between the movement periods.

The net result of this controlled movement approach is that inmates are not found milling around the various areas of the prison facility at their pleasure as had been observed on previous occasions.

Members of the subcommittee staff spent several hours behind the walls and observed several mass movement intervals and the intervening time. Inmates no longer are able to roam about the facility at will. During the subcommittee's hearings, McCune pointed out that one unannounced census revealed 255 inmates "out of bounds" (p. 521). A census taken less than 3 days prior to the subcommittee's April 1979 review of the facility revealed only three inmates out of bounds.

Controlled movement, coupled with the implementation of the pass program, may well be the single most important change effected in the institution since the subcommittee hearings.

Subsequent interviews with inmates revealed that the controlled movement approach is "being felt" by the inmates. They are, for example, now required to spend 8 hours at their designated job. In the past, if they completed their work in less than the time allotted to it, they could go into the yard or the recreational areas or back to their cells. Now, they must be at the job for the entire work period.

METAL DETECTORS/X-RAY MACHINES

During the hearings, the installation of metal detectors was discussed by the warden and pointed to as a manifestation of increased concern for inmate security. While the metal detectors were not operational at the time of the hearings, their operation was commenced immediately thereafter.

Concern was expressed at the hearings by inmates and officers alike with regard to inmate acceptance and utility of the metal detectors. The subcommittee staff's review indicates that the inmates have, in fact, accepted the metal detectors, and that all inmates pass through the metal detectors as they return from Prison Industries.

Warden Hanberry observed that prison administrators had determined the lack of a need for four detectors as had been originally proposed; two detectors can adequately handle the inmate population. In lieu of the two additional detectors, the warden is installing X-ray machines for hand-carried items. This results from the warden's determination that inmates have the capability of inserting knives, screwdrivers, scissors and other items in portable radios and other materials which they may carry with them and which, in the past, have been simply subject to guard scrutiny. The warden conducted his own personal evaluation of whether or not contraband items could be secreted in portable radios. He was

advised by his custodial staff that the portable radio housing units were too filled with radio components to accommodate contraband items. The warden, therefore, ordered a portable radio unit from the commissary, dismantled it, and inserted a screwdriver, a knife and various other items in the radio unit. He then demonstrated the unit, including these items, to his custodial staff. This demonstration resulted in the ordering of two X-ray machines, identical to those employed at airports, which will be physically located in the shed housing the metal detectors.

In a subsequent interview with an inmate, which will be discussed in greater detail below, the inmate observed that the metal detectors cannot possibly be totally effective because of the ability of inmates to secret knives and contraband items in radios. The installation of the X-ray units, which are not yet operational, began in early May 1979.

PLASTIC EATING UTENSILS

During the hearings, discussions took place with respect to the use of metal cafeteria knives as weapons. It was pointed out that the metal detectors are located between the industry area and the rest of the facility. It was observed, however, that the cafeteria is located on the inside of the metal detectors and therefore an inmate could obtain a metal knife from the cafeteria area which could be honed into a very effective lethal weapon. In hopes of improving that situation, the warden has installed plastic, reusable eating utensils in the cafeteria. While these eating utensils are sturdy enough to withstand reuse, it is felt that they are less hazardous than metal utensils. The warden, as does the subcommittee staff, shares the concern that even these plastic utensils could be used in a lethal manner.

E CELL BLOCK RENOVATION

Concern was expressed by the Federal Prison Systems investigative team about the processing of new inmates coming into the institution in a manner affording "predator-type inmates relatively easy access to new inmates."

In that regard, the renovation of E cell block, which was in the discussion stages at the time of the hearings, has been approved and is under construction at this time. E cell block is located to the right and the rear of the main cell house and adjacent to a separate entrance in the west wall of the penitentiary. This old entrance has been in disuse for decades. The renovation of E cell block involves the installation of single unit, stainless steel commode and basin units (incapable of being broken and turned into weapons); the opening of an entrance into the cell block on the west end; and fencing from the cell block to the west entrance.

As modified, E cell block will be used for the indoctrination of new inmates into the prison facility. Inmates will enter through the west wall directly into E cell block. They will spend approximately 2 weeks in the cell block being processed, indoctrinated and evaluated. In addition to this capability, E cell block will have floors designated for disciplinary segregation, administrative segregation, and transients. This will allow inmates in the various categories to be separated from other inmates. In the view of the subcommittee staff this process should help prevent the kinds of problems that gave rise to the murder of William R. Zambito within hours of his arrival at the institution. Zambito, reputedly a mob enforcer in Miami, and a suspect in numerous murders, was given assurances he would be protected while serving the time on drug charges in exchange for his testimony in a naroctics case. Even though placing him in Atlanta exposed him to physical jeopardy, he was transferred there and stabbed to death on March 23, 1978, within hours of his arrival.

Mr. President, William R. Zambito was given assurances that he would be protected while serving time on drug charges in exchange for his testimony in a narcotics case. In other words, he cooperated with the Government in a narcotics case, and he was given assurances that he would be protected while serving time on the drug charges.

Even though he was given those assurances, and even though the authorities should have known that putting him in Atlanta exposed him to physical jeopardy, that he might be injured or killed, they did it anyway. He was transferred there, and he was stabbed to death on March 23, 1978, within a few hours after his arrival.

Mr. President, I think that shows mismanagement. It shows a lack of interest in a human being. The proponents talk about the rights of individual citizens. We all believe in rights. But I think the greatest right a person has is the right to live and the right to make a living.

In this case the man was not allowed to live. He had cooperated with the Government and they assured him he would be protected, but they put him in Atlanta with people there who killed him.

If the Government cannot manage its own institutions in a more efficient and acceptable manner than that, why do they come in and ask authority to investigate and bring suits against States concerning the institutions in the States of the Nation?

Again I say they have their hands full in managing their own institutions without trying to involve themselves in the State institutions. Continuing to read:

The use of E block for incoming inmates should be contrasted with the current situation wherein inmates are brought through the main door and through general population to a processing area under the central corridor from which they are immediately removed to general population.

INMATE RELOCATION

An additional positive influence on conditions in Atlanta is the new inmate designation system which went into effect the first of the year. That designation program provides that only level V inmates are to be located in Atlanta. This has resulted in the less violent inmates being transferred out of Atlanta. In fact, the situation is such that the warden has had to make a request for 45 level I inmates, which are minimum custody, honor inmates, to work outside the institution on the grounds. So far, only five level I inmates have been received in Atlanta. These level I inmates are housed separately from the other inmates.

INCREASED URINE SAMPLING

Random unannounced urine specimen tests are now conducted on 12 percent of the inmate population each month, an increase from the 5 percent discussed in hearing testimony. Additionally, a "hot-book" is being maintained on narcotics users. In the past a hot-book was maintained in the lieutenant's office on violence and escape-prone inmates; the movements and associations of those included in the hot-book were more carefully monitored. Now, a separate book is maintained on suspected narcotics users and a larger proportion of these individuals are subjected to the urine specimen tests because of their suspected narcotics dependency.

STAFF BRIEFING

Shortly after the subcommittee hearings Warden Hanberry began a briefing procedure during which he personally briefed every employee on contraband, inmate techniques for gaining favor with employees and the consequences of becoming involved with inmates. Each training session lasted approximately 30 minutes and included 15 employees at a time. Additionally, the warden includes this more expansive presentation in his orientation presentation for new employees.

OTHER CHANGES

Warden Hanberry also provided the subcommittee staff with a brief summary of other changes designed to improve facility management and morale. These changes include the installation of 20 coinless, nodial telephones in the cell blocks for inmate use in making collect calls not to exceed 10 minutes; and a reduction in inmate population from approximately 2,000 at the time of our hearings to 1,300 inmates on November 30, 1979.

Subsequent to the interview of Warden Hanberry, staff took an extended tour of the penitentiary and noted for itself the implementation of the physical changes which he described. Certain of staff's observations are noted under appropriate headings earlier in this report.

After the comprehensive tour of the facility, subcommittee staff conducted a series of recorded interviews with certain inmates who were first interviewed last fall prior to the Atlanta hearings. In general, the interviews confirmed the accuracy of Warden Hanberry's characterization of the "tightening down" of the institution.

INMATE INTERVIEWS

The first such inmate interviewed was, in previous meetings, hostile toward the warden and the management of the institution and critical of the loose manner in which the institution was run. In the April 18 interview, the inmate complained of different problems. His concern is now over the fact that inmates no longer have the freedom to move about as they did in the past. He said: "I am supposed to work an 8-hour day and I have to be at the job 8 hours." He went on to state that while, in the past, if he got his work done in an hour he could go take a nap or go out for exercise or walk around the yard, he can no longer do that. He said that, in his opinion, there is less contraband in the institution. However, he stated that the metal detectors are not adequate since a knife could be concealed in a radio. He made these statements without being aware of the fact that X-ray machines were about to be installed in the institution to rectify the problem. The inmate expressed concern over the unit management system because he feels that the unit managers are performing custodial functions rather than being counselors and advocates of inmate welfare. He also resented the employment of plastic as opposed to metal service ware in the cafeteria. He feels that this is demeaning. The inmate, who told the subcommittee staff that he was "high" on marihuana during our interview, stated that, while scarcity is causing marihuana to be more expensive, it is still available at a higher price.

Another inmate interviewed had been complimentary of Warden Hanberry during his earlier meeting with staff. During the recent interview, the inmate stated that the situation has "improved 100 percent." He attributes this to the controlled movement of inmates and to the deterrent effect on the shakedown activities. He was generally in favor of the unit management concept because it develops closer ties between inmates and employees.

The third inmate with whom staff spoke, who was also interviewed prior to the Atlanta

hearings, expressed his support for the changes which have been made and feels that they have definitely improved inmate security and conditions in the penitentiary. Additionally, he said the unit management concept is a sound idea because of the close contact it provides between inmates and employees. While he admitted controlled movement significantly reduced inmate mobility, he found it somewhat of a disadvantage because of the direct consequence of requiring any activity to take the 50-minute interval between permitted movements. For example, if an individual wants to take a 15-minute walk, he has to take a 50-minute walk because he cannot make a transition from one area of the institution to another other than at a designated time. Additionally, he was not particularly pleased with the fact that the warden has significantly reduced the maximum permissible personal property which may be maintained in a cell. He concluded by stating that the shakedown group is causing significant inmate dissension. But he unequivocaly favors it because he feels it is for the inmates' own good.

(Mr. LEVIN assumed the chair.)

Mr. THURMOND [reading]:

EMPLOYEE INTERVIEWS

In addition to interviewing the three inmates, the subcommittee staff interviewed three penitentiary staff members, two in person and one by telephone. The first staff member, interviewed in the institution on April 19, is a correctional officer who has been employed with the institution for 5 years. He has been on the shakedown squad for the past 3 months. He was enthusiastic over the shakedown group and feels that it has improved staff morale significantly. He explained that his entire 40-hour week is spent on shakedown operations. However, he feels additional manpower needs to be allocated to the shakedown crew. He favored increasing the complement from four to six. For 9 days, two of the four were removed because of manpower shortages in other areas, making it difficult for the unit to operate effectively, he said.

The employee also expressed some concern over the unit management system since, in his perception, it has resulted in "too many bosses" in a particular cell block. He feels that the presence of the unit managers is an indirect encroachment on the role of the custodial officer who used to be preeminent in the cell block. He cited a few minor examples of this encroachment.

While he acknowledged the legitimate need to rotate personnel on the shakedown unit, he would personally prefer to remain in that detail; he did not see any real advantage to the rotation program if the right individuals for the shakedown crew were initially selected.

The second Atlanta employee interviewed by subcommittee staff on Thursday April 19, had been, in the past, one of the most ardent critics of fiscal mismanagement in the facility. He was helpful to the subcommittee's investigative efforts prior to its Atlanta hearings in the fall. In this interview, he candidly stated that the financial mismanagement and sloppy record keeping in the CMS area has ceased. He directly attributed this to the subcommittee's investigation. He further stated that inmate movement has been significantly curtailed to the benefit of the entire institution.

The third employee interviewed also was helpful to the subcommittee in its preparation for the Atlanta hearings. In the most recent discussions with him, he candidly stated that the warden has made significant and dramatic changes in the institution resulting in greater inmate security and more employee control. He pointed with some pride to the fact that plastic utensils are currently being employed in the cafeteria. This is something he had recommended to the subcommittee last summer as a change easily implemented which could have a dramatic impact on security.

CONCLUSIONS

To complete its oversight update, the subcommittee staff requested that the onsite GAO auditors update their review of the violent incident reports for the period October 1978, through November 1979. This review produced the following results:

Mr. President, I ask unanimous consent that this table be printed in the RECORD.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

OCTOBER 1978 TO NOVEMBER 1979.—VIOLENT INCIDENT REPORT

Month and year	Killings	Assaults	Fights	Total 1, 2, 3	Threat-ening	Weapons	Drugs
October 1978	0	4	8	12	4	3	13
November 1978	0	1	7	8	4	3	10
December 1978	0	7	11	18	2	0	33
January 1979	0	3	7	10	1	4	45
February 1979	0	1	7	8	1	2	18
March 1979	0	1	5	6	0	4	22
April 1979	1	0	0	1	6	1	04
May 1979	1	1	2	4	1	0	12
June 1979	0	0	1	1	0	1	8
July 1979	0	3	1	4	1	2	5
August 1979	0	3	3	6	3	6	17
September 1979	0	2	0	2	1	1	9
October 1979	0	3	4	7	2	1	2
November 1979	1	4	2	7	2	1	4
Total	3	33	58	94	28	29	220

(Mr. PRYOR assumed the chair.)

Mr. THURMOND. Mr. President, I think this further illustrates the manner in which the Justice Department is handling one of its institutons, the Atlanta penitentiary. In 1 year, I repeat, they had 3 people killed, they had 33 assaults, they had 58 fights, for a total of 94 incidents. They had 28 threats, 29 weapons, and 220 engaged in drugs.

This does not speak too well for the Justice Department which operates this institution and now wants to take over and supervise, investigate, and bring suits against the States for alleged violations in State institutions.

Now, from August 1975 to September 1978 the violent incident report is very interesting, too, and, as given here as exhibit No. 47 in the report by Senator NUNN and Senator PERCY, and I ask unanimous consent that that table be printed in the RECORD.

There being no objection, the exhibit was ordered to be printed in the RECORD, as follows:

EXHIBIT NO. 47.—AUGUST 1975 TO SEPTEMBER 1978 VIOLENT INCIDENT REPORT

Month and year	Killings	Assaults	Fights	Total 1, 2, 3	Threat-ening	Weapons	Drugs
August 1975	1	0	0	1	1	2	6
September	0	1	2	3	2	5	8
October	0	3	6	9	4	2	14
November	1	1	5	7	3	4	8
December	0	5	6	11	0	1	16
Total	2	10	19	31	10	14	52
January 1976	0	2	9	11	4	1	10
February	0	0	2	2	1	2	24
March	0	4	16	20	5	3	6
April	0	1	7	8	2	6	10
May	1	2	5	8	4	6	12
June	1	3	9	13	3	2	6
July	0	0	6	6	2	3	22
August (missing from files)							
September	0	9	12	21	9	5	13
October	1	3	6	10	3	7	14
November	0	4	1	5	2	2	15
December	0	2	5	7	1	9	16
Total	3	30	78	111	36	46	148
January 1977	2	5	14	21	3	4	11
February	0	1	0	1	1	2	15
March	0	6	14	20	5	5	18
April	0	1	7	8	4	6	13
May	0	1	6	7	5	1	25
June	0	5	13	18	2	7	20
July	0	3	10	13	0	3	22
August	2	2	5	9	3	2	24
September	0	4	10	14	5	9	24
October	0	1	3	4	4	3	16
November	0	3	7	10	5	3	24
December	2	3	9	14	2	3	18
Total	6	35	98	139	39	48	230
January 1978	0	2	6	8	4	5	21
February	1	1	6	8	4	5	17
March	1	3	12	16	1	2	27
April	0	5	5	10	3	4	23
May	0	0	8	8	2	0	5
June	0	5	8	13	1	6	5
July	0	4	7	11	0	4	10
August	0	4	7	11	3	4	17
September	1	2	11	14	0	6	9
Total	3	26	70	99	18	38	134

These statistics, which are for a 14-month period, suggest a decrease in most categories. However, when considered in light of the major changes implemented by the prison administration, they are not encouraging. Throughout these hearings, the Atlanta prison industry has been cited by both employees and inmates as a major threat to security within the institution. Unfortunately, it may be true that an inmate bent on injuring or killing another will find the means to do so, no matter what. Nevertheless, the fact that so many of the homicides committed at the Atlanta Penitentiary have been accomplished with industry-made weapons cannot be ignored.

The Atlanta industrial operation is the largest in the Federal prison system. It has a staff of 101 and a capacity to employ 1,150 inmates. In fiscal year 1978, the industry operation employed a daily average of 926 inmates who earned $1,453,000.

Although the size of the industrial operation has contributed to Atlanta's security problems, there is no doubt that prison industry programs serve a beneficial purpose. Indeed, inmates at Atlanta have consistently extolled the virtues of the industry operations as a vehicle for them to generate needed income invaluable to their families. Many inmates, such as Joe Louis Denson, have worked double shifts to maximize their income-producing capacity. Furthermore, for those inmates who are sincere about their efforts to rehabilitate, learning a trade and becoming familiar with a work environment can be useful for adjusting to the outside.

In a recent letter to Senator Nunn, one inmate currently in Atlanta raised the following question:

Have you considered the consequences of cutting off the major source of income for the inmates by closing the prison industries? You would create a horrible situation. Traffic in drugs and contraband would increase as inmates dealt in these even more as a source of income.

They would be robbing each other's lockers which would bring about more killings. If an inmate did have money to buy commissary he would have to have two or three bodyguards to keep from getting robbed as he went from the commissary to his cell.

The Atlanta Penitentiary is a huge institution; its population exceeds by three times the recommended maximum for correctional institutions. It has been the setting for many violent inmate murders and hundreds of dangerous incidents, primarily because the ancient physical plant is extremely difficult to manage and make safe. Closure of this prison is essential to the development of a respectable Federal Prison System.

It is the opinion of staff that the Attorney General should develop a plan to close the Atlanta Penitentiary as soon as feasible but not later than 1984. The Bureau of Prisons and the House Judiciary Committee stated its opinion in the Department of Justice Authorization Act report:

Mr. President, that is an effort to blame the violence and other things on the plant. I do not know that you can do that. Management is the key to running institutions and management of the right kind, in my judgment, could prevent a number of these violations. But if the Justice Department cannot manage this institution any better than it has, again I ask the question: How can it take over the supervision or investigation of all State institutions of the kind referred to in this bill and assume that responsibility. Continuing:

James A. Meko, the Executive Assistant to the Director of the Bureau of Prisons outlined the specific deficiencies of the Atlanta facility in a May 30, 1979 letter to the subcommittee. His main criticisms focused on the monolithic size of the institution. He cited numerous authorities, including the American Correctional Association (ACA), that recommend limiting prison populations to 400 to 600 inmates. The Atlanta facility also fails to meet other modern standards. The square footage of the cells tends to be far below the minimum set by the ACA. The use of steel and multitiered cage construction results in sensory deprivation for both the inmates and staff. Furthermore, the Bureau of Prisons estimates that it would cost up to $44 million to renovate the Atlanta Penitentiary so that it is in compliance with minimum standards.

The Atlanta Penitentiary was built in an era in which a prison was designed merely to isolate inmates physically and psychologically from the community. Since that time, great strides have been made in the correctional process. The Atlanta Penitentiary stands as a massive reminder of an earlier age but is no longer adequate as a modern correctional institution. Staff recognizes that a decision to close the Atlanta facility and its prison industry will be most difficult. However, as these other inquiries have shown, the investigation and hearings conducted by this subcommittee demonstrate that the penitentiary is too big, too old, and too dangerous. It serves to stimulate criminal activity rather than diminish it; it is unsafe for both prison employees and inmates alike.

The consequences of this conclusion cannot be taken lightly. It affects hundreds of prison employees who have diligently and courageously worked in the Atlanta Penitentiary despite the antiquated conditions. In devising a closure plan, the Attorney General should consider the effect upon the prison's employees and their families. The plan should assure that the closing is accomplished so as not to present undue burdens to these persons.

Closure will also have a profound effect upon the community at large. Staff suggests that alternative uses for the Atlanta prison property should be explored so that a smooth transition might occur when one of the Nation's biggest and oldest prisons closes its doors for the last time.

Mr. President, in the back of this report is appendix A, which I will read to show the situation:

The U.S. Penitentiary at Atlanta is located on 162 acres in the southeast quadrant of the city of Atlanta. What is now C and D cellhouses and the kitchen building were opened in 1902, although construction continued until 1921. There are 22 buildings on 28 acres inside the wall. The wall itself has 11 manned towers. Staff residences, the power house, warehouses, and the Atlanta Staff Training Center and Community Treatment Center are on reservation land, adjacent to, but outside the wall of the institution. The reservation is today bounded by residential areas to the north, east and south; a General Motors assembly plant is to the west.

The maximum security penitentiary houses adult, long term repeat offenders primarily from the southeast. The current physical capacity is 1,500; the operating capacity is 2,200. During calendar year 1977, the averge monthly population was 2,194. In September 1977, the population reached 2,300. However, it has steadily decreased to a present total of approximately 1,300.

The inmates are housed in five cellhouses, six dormitories, and a drug abuse program unit. A and B cellhouses are the largest and are physically identical. However, the first and second tiers of B cellhouse are the admisions and orientation unit. In each cellhouse are 100 cells divided into 5 tiers of 20 cells. Nineteen are used for housing, one for showers. Although the cells are designed for four inmates, with the population increase each cell now houses six to eight men. Each of these cellhouses has a physical capacity of 380, although operating capacity is now between 570 and 760.

C and D cellhouses each have 180 single cells on 5 tiers. There are 36 cells and 1 shower to a tier. E cellhouse is located in a separate building behind the hospital and adjacent to the west wall. The 4-tier E cellhouse has an operating capacity of 225. The first tier houses two inmates per cell with an operating capacity of 90; the remaining cells are single occupancy with 45 per tier.

Two of the six dormitories are located in the basement underneath A and B cellhouses. They have a physical capacity of 102 and 134, respectively. Dorm 1 is located in the basement of E cellhouse and has a physical capacity of 70. Dorm 2 is on the third floor of the classification and parole building with a physical capacity of 65. Dorms 3 and 4 are above the laundry and have a physical capacity of 70 and 60, respectively.

E cellhouse and the six dorms are used as preferred housing for inmates who maintain good conduct. There are no housing units outside the wall. The total institution operating capacity is 2,200 excluding the segregation building and the hospital.

The drug abuse program unit, in the basement of the hospital building, has a physical capacity of 50 inmates.

The segregation building has a capacity of 118 inmates housed on two floors. The first floor is used for disciplinary segregation cases and those in administrative detention awaiting Institutional Disciplinary Committee hearings. There are 13 cells with 4 beds each and 3 single occupancy strong cells for a total of 55. The second floor confines long-term administrative detention cases. There are 17 cells with 3 beds each and a 12-bed dormitory for a total of 63. The dormitory is used for young holdovers awaiting bus transportation to their designated institution. All cells have stainless steel security sinks and toilets, and each floor has a shower room. A small kitchen equipped with microwave ovens is also located on each floor. Attached to the building is the recreation yard which is 54½ feet by 35½ feet surrounded by an 11-foot wall topped by a 5-foot fence. The yard has a basketball hoop, a handball court and a punching bag. In addition, a universal gym machine is located on the second floor, but only inmates on that floor can use it. During 1977 an average of 88 inmates were confined in the segregation building.

* * * * *

The Federal Prison Industries complex is the largest in the Bureau of Prisons with over 16 acres of floor space. With a staff of 104, Federal Prison Industries can employ 1,150 inmates. In 1977 an average of 900–950 were continuously employed and earned over $1 million in salaries. (Report of the Investigative Team Into Matters of the Security of the Offender, Atlanta Penitentiary, April, 1978.)

Mr. President, Senator NUNN wrote a letter, shown as appendix B, to the Honorable Elmer B. Staats, Comptroller General of the United States, General Accounting Office, Washington, D.C., on October 2, 1978. That letter reads as follows:

DEAR MR. STAATS: The Permanent Subcommittee on Investigations has been conducting an inquiry into allegations of corruption at the U.S. Penitentiary at Atlanta. Hearings were held on September 29 and October 2, 1978, on the subject. In preparation for the hearings three members of your staff were detailed to the subcommittee to conduct a limited review of certain expenditures of the

Mechanical Services Department of the Penitentiary. The three General Accounting Office staff members are: Bob Taylor, Fred Mayo and Paul Rhodes.

While their audit did not uncover evidence of corruption in maintenance and construction activities, it did uncover management practices which could allow such corruption to happen. Records were poorly kept and there was a failure to adhere to Bureau of Prisons policy statements with regard to expenditures of funds for appropriated purposes. Your staff members also found that the Bureau of Prisons Southeast Regional Office was authorizing these expenditures. In interviews with regional office and penitentiary officials, the staff was told these practices are common throughout the Bureau of Prisons system, in part because the Bureau's policies are incomplete.

Because of the volatility of the situation in the penitentiary and because of the management practices your auditors found seem to apply throughout the Bureau of Prisons and not uniquely to Atlanta, I decided not to make their detailed findings public at this time.

I am deeply concerned about what was learned at Atlanta and the subcommittee will continue investigating similar problems elsewhere for future hearings. At the same time, I wish to see the Bureau start taking immediate corrective action. For these reasons, I request that the General Accounting Office expand the work begun in Atlanta to a detailed audit of a cross section of Bureau of Prisons institutions, including those in Atlanta, Ashland, Englewood, McNeil Island, and New York, and the appropriate regional offices and headquarter departments.

The audit should examine in detail how well the Bureau is managing its procurement, financial, property, services, and personnel management functions. In doing so, the auditors should determine (1) Bureau of Prisons compliance with Federal laws and regulations; (2) the appropriateness of Bureau of Prisons policies; and (3) needed corrective action. Because of our concern about the lack of management and training provided Bureau of Prisons managers and staff, including correctional officers, I request that this area be thoroughly examined as part of your review of personnel management.

I realize that my request will require a significant expenditure of your resources. However, I understand that Mr. Taylor is also responsible for examining Federal assistance provided State correctional agencies and I feel that the experience gained in this audit of the Bureau of Prisons can be made available to State correctional agencies to help them develop proper management, accounting and auditing procedures.

The subcommittee staff will work closely with Bob Taylor to work out the details for reporting the results of the audit and providing further assistance to the subcommittee. Mr. Taylor has assured me that he will design the audit in such a way that the Bureau of Prisons will be able to take corrective action as each phase of the audit is completed rather than having to wait until formal reports are ready for issuance.

It is my hope that Messrs. Mayo and Rhodes will have the time and can be assigned to the review. Based upon the precision and speed with which they completed their initial survey and the quality of their work product, I personally would feel comfortable knowing that Messrs. Taylor, Mayo and Rhodes were working on this project.

I suggest that this project can be broken down in phases, so that incremental parts of it can be reported as they are completed, in a timely manner. I suggest that the GAO consider issuing a series of staff studies and that at the end of the review, a report, including the information contained in staff studies, be issued with findings, conclusions and recommendations. My suggestion is based upon my desire to have the elements of your review disseminated as quickly as possible.

Again, I wish to thank you for the outstanding assistance provided the subcommittee by your staff.

Sincerely,

SAM NUNN,
Vice Chairman.

Mr. President, I think this letter by Senator NUNN to Mr. Elmer Staats, the Comptroller General of the United States, is a key to the lack of ability of the Federal Government, through the Department of Justice, to take on any additional duties which this bill would contemplate. This bill contemplates investigating the penal institutions, the mental institutions, and other categories mentioned in this bill. At the same time, the Department of Justice is called on the carpet, so to speak, by this report that indicates deficiencies in their own institutions.

Senator NUNN says in his report to Mr. Staats that this subcommittee—

did uncover management practices which could allow such corruption to happen. Records were poorly kept and there was a failure to adhere to Bureau of Prisons policy statements with regard to expenditure of funds for appropriated purposes.

He goes on to say:

Your staff members also found that the Bureau of Prisons Southeast Regional Office was authorizing these expenditures. In interviews with regional office and penitentiary officials, the staff was told these practices are common throughout the Bureau of Prisons system, in part because the Bureau's policies are incomplete.

Mr. President, if all of these deficiencies exist in the Bureau of Prisons and in the Atlanta Penitentiary and in the operation of them by the Department of Justice, does the Department of Justice not have enough to do to make corrections in the responsibilities which it now has rather than trying to take on responsibilities for all of the institutions in the States of the Nation which could be affected by this bill?

I just want to say that this report is a most important report. This report was made by Senator SAM NUNN and Senator PERCY. It was a staff study of the U.S. penitentiary in Atlanta in response to information from many sources. The permanent Subcommittee on Investigations conducted a year-long investigation into this matter. The inquiry found, and I hope Senators are listening now.

This report by Senator NUNN and Senator PERCY found that the Atlanta Penitentiary, a Federal institution under the Department of Justice, has become the setting—and these are their words, Senator NUNN's and Senator PERCY's words, "has become the setting of violent inmate murders"—murders, I repeat; a Federal institution in which murders are occurring—"extensive narcotics"—not just some narcotics, but extensive narcotics. That means narcotics that are being distributed extensively, on a broad basis, to the inmates of the penitentiary.

Trafficking in narcotics, as well as the distribution. One witness testified there about the profits being several hundred dollars a week made from selling narcotics and other criminal activities.

If the Department of Justice cannot operate an institution more efficiently than this, their own institution, the Atlana Penitentiary, how can we expect them to do an efficient job in investigating and prosecuting—persecuting, I would call it, in State institutions?

Again, I say that, undoubtedly, there are some instances in the States of some mistreatment, but you find that everywhere.

But I do not believe we will find as bad a situation in any State institution I know of as we find, for instance, in this Federal institution, this Federal institution where I pointed out the large number of murders that were committed, the large number of assaults that were committed, the large number of fights that take place, the large number of threatening to people's lives that take place, the large number of weapons taken into this institution that pose a threat to people's lives, and the large number of people, hundreds and hundreds of people, on drugs in this institution.

If the Justice Department cannot control the situation in their own institution, how will they go down into the States and investigate and institute suits?

I say now if anyone has any complaint against any State institution, he can bring a suit. There are lawyers paid by the Government, eager, ready and willing, to bring those suits against the State, as the case may be.

Right now, there are remedies, and if any suit is brought on the part of any local government or because of a complaint of individuals, the Justice Department now can join in the suits as amicus curiae. Is that not sufficient?

Why, I repeat, why do we want to give the Justice Department the right to institute suits? If anyone wants to bring a suit and wants help from the Government, he can get it under the law now.

This bill will give the Justice Department the right to institute suits where no one has complained. Under this bill, if the Justice Department wanted to "find" for political purposes that some person of a particular minority, for example, is being mistreated or prosecuted, in order to win the votes of people of that particular minority group regardless of what group it is, they could bring suit and then the people of that group would feel that the Justice Department has the love of people at heart. They are coming down to look after their interests.

Mr. President, again I repeat that, in my judgment, the bureaucrats in Washington are truly not as interested in the welfare of people in the States and the inmates of State institutions as are the Governors of the State, as much as the attorney generals of the States, or as much as the State officials are.

I know in my State of South Carolina we have a Democratic Governor. I am sure he is interested in the inmates of all the institutions. We have a Democratic attorney general. I am sure he is interested in all the inmates of the institutions.

The majority of Governors in this Nation today are Democrats. The majority

of attorneys general are Democrats. I am sure that regardless of party affiliation, they are interested in their people. They are interested in the welfare of the inmates in the various institutions of this country.

I think it is ridiculous to give this added power. Today, the people of the Nation are yelling and pleading with their Senators, they are with me and I believe they are with the other Senators of this Senate, to stop this Federal power, stop the long arm of the Federal Government from interfering and interjecting itself into the lives of the people.

The people are terribly dissatisfied with what is going on now. This bill will give the Federal Government more power and more power and more power, to go down and interject itself in the lives of the people and interfere with the rights of the States.

I cannot believe there is a Governor in this country, or an attorney general in this country, not interested in protecting the inmates, the people in their State. I am sure that if they are contacted and there are complaints, they will look after them. If they do not, as I said, we have lawyers, paid by the Federal Government, to bring suits, in which the Federal Government can come in as amicus curiae—a friend of the court—can come in and as a friend of the court, and participate in these suits, if there is merit in them.

Mr. President, as I said in the beginning, in my opinion, this is one of the most dangerous, one of the worst, bills I have seen introduced in the Senate in my 26 years in the Senate.

We talk about power. There is only so much power. It is a question of whether it is at the Federal level or whether left with the States and the people where the Constitution put it.

This bill now will have just the opposite effect from what people want. People want the Federal Government curbed. People want the Federal Government curbed in interfering with the rights of the States. They want the Federal Government curbed as interfering in the lives of the people.

This bill does just the opposite. This bill shifts more power—I repeat, more power—to the Federal Government than it has now.

Is that what the people of Arkansas want? Is that what the people of South Carolina want? Do they want to shift more power to the Federal Government, or do they want to curb the power of the Federal Government?

My people in South Carolina think the Federal Government has too much power. They think they are interjecting themselves into too many things now that are causing trouble and irritation. Why have that? Why bring about more irritation?

I can visualize the Justice Department bringing suits in South Carolina and Arkansas and New York and Illinois, and everywhere, against State officials—that, in itself, creates irritation—within the States. It causes people to get mad at the Federal Government when it is unnecessary.

Why not let the State run its own institutions, as they are doing now. If anybody is dissatisfied, he can complain. If the State authorities do not correct it, lawyers are paid by the Federal Government to bring suits in which the Federal Government can join in the suit. But do not give the Federal Government the power to institute these actions, which in many cases, in my opinion, may be for pure political purposes.

Mark my word, if this bill passes, we will see lawsuits instituted against States and State officials for pure political purposes.

Mr. President, to give an example of the feeling of the Governors and the attorney generals of this Nation, I will read an excerpt from the testimony of the attorney general of the State of Nebraska, Paul L. Douglas. I will not read all of it, but a portion of his statement. This comments on S. 1393, which was a bill introduced in a previous session of Congress on the same subject:

The real issues, pro and con, on the above bill do not involve the protection of the constitutional rights of persons in state institutions. I consider myself, and persons with whom I have come in contact in administration of the state institutions of the State of Nebraska, as much concerned with the protection of the constitutional and other legal rights of persons in our institutions as anyone, including the staff of the United States Department of Justice. The real issues involved, as I see them, are how may these constitutional and legal rights best be identified and protected commensurate with the constitutional rights of the public generally.

On these questions, I would first point out that except for prison cases by inmates, no United States Supreme Court decision concerning or delineating any constitutional right to treatment has yet been decided. The only case thus far, touching only tangentially, is that of *O'Connor* v. *Donaldson*, 422 U.S. 563 (1975), which held that a nondangerous mentally ill person not receiving treatment must be released from custody if he has a satisfactory place to go.

If the levels, techniques, gradations, goals, etc. of treatment have not even been determined, the question arises, how is the United States Justice Department to determine that constitutional rights of institutionalized persons are being violated. Of course, there are certain conditions, such as those cited by Senator Bayh in the Congressional Record when introducing this bill, upon which all reasonable men would agree are violative of a person's constitutional or legal rights. However, experience demonstrates that the United States Justice Department has not and will not be restricted to such flagrant abuses as there depicted.

Once the United States Justice Department gets involved, on the grounds that minimal constitutional rights must be protected, their demands quickly turn to an all-out effort to secure a maximal ideal program of services, minutely prescribed by their experts, costing million in tax dollars to implement and resulting in lowered services to other citizen groups. (Witness New York State which has spent an additional 60 million dollars on mentally retarded programs over the past two years to implement the Willowbrook consent decree.)

Who is going to pay those millions? The States. Continuing:

Another problem with the approach to S. 1393, besides the United States Justice Department selecting standards it feels are constitutionally required, is the selection of the states against which it wishes to litigate.

In other words, what the Attorney General is saying is that the Justice Department, in their discretion, can pick out any State it wishes and leave alone any State it wishes. Some big State with many millions of votes, they may decide to leave alone in an election year. A little State or some other State they feel they can afford to lose an election, they will pick on. This will make the whole Nation feel that they are trying to protect the civil rights of the people of the entire Nation. Continuing:

Does it pick what it considers the worst first, or does it pick the best first, or somewhere in between? The State of Nebraska, which is one of the leading states in the United States in providing community programs for mentally retarded and is first in the nation in percentage of persons transferred from its one state mental retarded institution into community programs, was selected by the United States Justice Department as a target for intervention in an existing case, and in which it has led litigation ever since, the primary objective of the case being the transfer of more persons to community programs. There are no guidelines as to which states have to suffer the high costs of manpower and money in defending these onslaughts. So, presumably, it is to be done at the sole discretion of the United States Justice Department (apparently in Nebraska to set precedent to show other states they had better fall into line).

In *United States* v. *Solomon*, 419 F. Supp. 358 (1976), one of the cases which held the Justice Department had no authority to bring such suits, and triggered, in part, this proposed legislation, the federal district court pointed out that the United States Congress has already taken a number of steps through the Department of HEW to improve state institutions, not only by providing funds, but also by delegation to a department with experts in the field. In this regard the court stated:

"This Court simply cannot believe that Congress intended or expected that while an elaborate plan to improve the lot of the mentally retarded was being implemented by the one federal agency (the Department of Health, Education & Welfare) with expertise in the field of mental retardation, another government agency (the Department of Justice) with no expertise in the solution of the very difficult problems posed by mental retardation would simultaneously be making wholesale attacks on a state's mental retardation programs under the guise of protecting thirteenth and fourteenth amendment rights. Surely, if Congress had wanted two agencies to be involved in ameliorating the states' efforts to help the mentally retarded, it would have at least provided some legislative guidance as to procedures for preventing the conflict and contradictory goals that can and do occur when two federal agencies independently act on the same matter."

In this vein, pending litigation with the Justice Department, of which I have personal knowledge, involves many conflicting and contradictory goals as between HEW and the U.S. Justice Department to the point that the states' compliance with standards of HEW in order to receive more federal funds is denounced by the Justice Department as a violation of what it deems to be the constitutional rights of the retarded. (One example: If the state expends matching funds to improve the living facilities at its one institution to meet the standards of HEW to qualify for large grants, the Justice Department claims these funds should be spent to better improve community facilities.)

Of course, when the approach of litigation is to be used, the federal judge must become the expert in whatever type of institution may be involved. He must be guided by the experts selected to testify for the Justice Department (who in the past have frequently been the same people) as opposed to the experts the state may present, often very limited by lack of funds. The Justice Department comes sweeping in with a battery of experienced attorneys, investigators, and all types of discovery methods gleaned from specialization in this one type of case, frequently to be opposed by attorneys for the state who have never litigated these issues before. The result may be a heavily weighted presentation in favor of the U.S. Justice Department.

A federal district judge, in attempting to determine what are constitutional and legal rights of residents, has no legal guidelines to go by. The same is true as to finding solutions. Assuming the case before him is one involving mental health, in drafting orders he does not have to be concerned with the state's problems of funding programs for the mentally retarded, convicted criminals, persons with disabilities of all kinds, education problems, dependent children, etc.

An example of the tunnel vision which may result from litigation into one specific type of institution arose in litigation with the U.S. Justice Department involving the retarded in Nebraska.

Here the attorney general is telling us that there is a case involving his own State with the Justice Department.

(Mr. STEWART assumed the chair.)

Mr. THURMOND. Mr. President, I am now quoting from the testimony of the attorney general of Nebraska:

The Justice Department objected vigorously, even claiming that court orders had been violated, because of the allocation request of the Governor in the distribution of Title XX funds among the various categories of needy and disabled persons eligible for said funds. This, despite the fact that the retarded received, and had received for years, a much larger percentage of said funds than the ratio of retarded persons to the other eligible categories.

In this same regard, there are not only policy decisions which must be made as to the distribution of funds among persons entitled to categorical assistance, but very grave decisions must be made, as this Congress well knows, as to the entitlement to the national resources of all persons. For example, what is the level of housing or national health to which all citizens are entitled? Is everyone entitled to the ultimate in housing or medical care as a matter of constitutional right? Obviously, any one extreme in any one field such as mental health, mental retardation, etc., when carried to the highest standard, could exhaust all available state funds to the detriment of other goals and need groups.

Litigation will not solve these questions even as to the one particular field involved in the case. Should the U.S. Justice Department obtain an order from the federal court which requires the state to provide treatment of the highest standard, which is what it will seek, how is it enforced? Suppose the Legislature of the state cannot or will not comply because of too many other demands upon the limited funds of the state.

In the recent case of *Welsch v. Likins*, No. 76–1473 and No. 76–1797 (Mar. 1977), which involved the level of treatment to be provided in a state institution for the retarded in Minnesota (a case instituted by private individuals under the Civil Rights Act, 42 U.S.C. § 1983, and injunctive relief under 28 U.S.C. § 1343(3)), the United States Court of Appeals for the Eighth Circuit, while upholding the orders of the United States District Court requiring extensive changes in the staffing and other levels of treatment, recognized that the Minnesota Legislature was still the ultimate determiner of what was to be done. In this regard, the Court of Appeals stated:

"In this case we are dealing with the right of a sovereign state to manage and control its own financial affairs.

This is important, Mr. President. It points out the powers of the States and of the Federal Government. He is trying to delineate here. He continues:

"No right of a state is entitled to greater respect by the federal courts than the state's right to determine how revenues should be raised and how and for what purposes public funds should be expended."

The court further recognized that if the State of Minnesota was going to operate institutions like the one involved, it must do so in a constitutional manner. The court then went on to recognize, however, that alternatives to such operation do exist, as follows:

"An extreme alternative would, of course, be the closing of the hospitals and the abandonment by the State of any program of institutional care and treatment for mental retardees. A lesser alternative might be the reduction in the number of hospitals. Or the Legislature and the Governor might decide to reduce by one means or another the populations of the respective institutions to a point where the hospitals would be staffed adequately and adequate treatment could be given to individual residents."

The case was then remanded to the district court to see what action the Governor and current (1977) Legislature, then in session, were going to take.

From the foregoing, it is obvious that the problem is not one which can be or should be attempted to be solved by litigation. The problem is primarily a financial one. Under litigation, the ultimate sanction of the courts, as pointed out above, presuming nothing else works, is closing the institutions. This relieves the state legislatures from providing any facilities at all and is no solution for the patients or inmates involved.

A much more meaningful and desirable solution can and should be worked out between the states and the federal government. The level of standards which can practically and uniformly be reached in all states commensurate with availability of trained staff, money, and the needs of other citizens should be worked out after a thorough study of the problem. Considering the mobility of the population, the availability of trained personnel, and the diversity of the states, perhaps each state should not have an institution of each and every type.

In spite of achieving "landmark" decisions in their favor, the United States Justice Department has really achieved no significant benefits for the classes it represents. In *Willowbrook*, for example, costs have increased to $35,000.00 per client per year. Yet, all parties agree, no significant benefits have resulted for the client. Some clients are not responsive to current medical technologies and no amount of funds will help. The involvement of the United States Justice Department has focused on making a case for the inability of state government to insure rights and provide services. To do this, the U.S. Department of Justice frequently distorts reality (i.e., gathering only negative pictures of the institution and only positive pictures of community services and depicting this as objective comparisons).

In Nebraska, the totality of human needs far outstrips the availability of funds to meet these legitimate human needs. In fact, if the total income of all working Nebraskans were taken via taxation and applied to the identified needs of Nebraska citizens, there would still be insufficient funds to meet all needs for housing, education, medical care, food, roads, etc. S. 1393—

And that is a similar bill introduced in the previous Congress.

represents a mechanism for developing responsiveness to a special interest or need group, at the expense of other citizens. Since there is not enough money to adequately meet the needs of all people, court action to insure that the needs of specific groups of people are met, simply reduces the level of services to other need groups.

Lastly, but of utmost importance, the area which has probably suffered more than any other because of the past litigation by the United States Justice Department is that of State-Federal relations.

Now, Mr. President, I think this is most important. It addresses how this bill is going to damage State-Federal relations. If the Federal Government has to bring suit against the State of Alabama and the officials of Alabama, it is not going to leave a very good taste with the citizens of Alabama, with them or with the officials of that State. The same thing applies to my State of South Carolina or to any other State. Continuing:

Further litigation can do nothing but broaden this gap. Except for the Civil War, State-Federal relations are undoubtedly at one of the lowest levels since the Constitutional Convention. Had the framers of the Constitution remotely envisioned the breaches in the principles of federalism which have occurred, the arguments over the adoption of the Constitution would probably still be going on. Congress has repeatedly rejected this type of legislation in the past, except when based upon racial discrimination. Not only does the present bill go farther than ever before, it permits it to be done without even giving the States an opportunity to remedy an alleged situation after notice. The United States Justice Department says, "We'll give them a chance to remedy the situation first"—the bill doesn't require it and it frequently has not given time to the States in the past. Be that as it may, the last thing this nation needs is the Federal Government suing the States if it is to continue to survive. The United States Justice Department frequently treats us as the enemy already, without legislation.

Mr. President, that is the statement of the attorney general of Nebraska. They knew from firsthand experience how the Justice Department operates in these matters.

I want to repeat that the Governors of the States are against this bill. I ask any Senator here to ask his Governor how he stands.

I want to repeat that the attorneys general of this Nation are against this bill. If there is any question in Senators' minds, let them ask their own attorney general how he feels about it. They are against it because this bill gives the right to the Federal Government not only to come in on a suit, which it can do now if somebody else institutes it, but it gives them the right to institute the suit in the first instance.

Right now under present law they cannot do that. If somebody complains and brings a suit—and there are plenty of lawyers paid by the Federal Government to bring the suits—the Federal Government can intervene. They can

come in and join amicus curiae. But they cannot in the beginning institute a suit. This bill gives them that right.

I can visualize a lot of irritation, a lot of turbulence, a lot of ill-feeling between the States and the Federal Government if this bill passes, because when suits are brought by the Federal Government against the State of South Carolina, my people are going to begin to hate the Federal Government. They feel now it is usurping too much power belonging to the States. They feel now it is usurping too much power belong to the citizens of the States.

When this bill passes, if it does pass, and suits are instituted, these citizens of my State will begin to wonder who is their friend. Is it the Federal Government, their Government, or is it like some enemy overseas? Why should the Federal Government sue my State or any other State here in matters of this kind? This matter here involves purely State institutions, mental institutions, penal institutions, and other State institutions, and I do not think the Federal Government ought to come in and institute suits against them to control the State institutions. They have no right under the Constitution to do that.

Now, I want to say this: There is a lot made here, as I have said before, over a few cases, a few isolated cases, where maybe someone was not treated right in some place. Well, maybe they were not, and there probably is merit in some of the few cases. But we are speaking of only a handful of cases. You have 225 million people in this country, and only a few people and a few States have complained, and if they want to bring a suit, they can bring a suit. They can find lawyers to bring them. The Federal Government provides legal defense lawyers.

They are eager and waiting to bring suits. However, I do not think the Federal Government ought to be allowed, in the very beginning, to institute suits in matters of this kind against the States.

I repeat, the Federal Government cannot even take care of its own institutions. I have stated in my speech here today how they have allowed violence to occur in the Federal penitentiary in Atlanta. They have allowed murders there, they have allowed narcotics to be distributed and sold in the Federal penitentiary in Atlanta, and they have allowed other criminal acts to occur in the Federal penitentiary in Atlanta.

I just read the report here by Senator NUNN, a Senator from that State, and Senator PERCY, a Senator from Illinois, to the effect that those things are going on.

If they cannot control their own institutions, how in the world can they try to control their institutions and go further and control all of the institutions covered by this bill in all of the States of the Nation? It just does not make sense.

I say, let the Federal Government look after its own affairs and let the States look after their affairs. That is what the people of this Nation want. They are sick and tired of Federal power. They are sick and tired of Federal control.

Right now, the Federal Government is controlling every school district in my State. It is controlling every hospital in my State. It is controlling everything it touches. And it is doing the same thing in Alabama, Nebraska, Virginia, and every other State of the Nation.

The people of this country are tired of it. They are sick of it. They have enough of it.

And this bill goes even further, I repeat, it goes even further and give more Federal power and takes it away from the States and the people as provided in the Constitution. I hope the Senate will see fit to kill this bill.

This bill is a worse bill than the Senate passed. Anyone who voted for this bill when it went to the Senate before has good reason not to support it now. Because, in the conference which was held between the House and the Senate, this bill was made a worse bill from the standpoint of the States and the people in the States. They have good reason not to go along with this bill now, and I hope they will not do it.

Mr. President, I ask unanimous consent that I may continue my address on this legislative day or some other legislative day.

The PRESIDING OFFICER. Is there objection?

Mr. BAYH. Mr. President, reserving the right to object, and I do not want to object, but I wonder if the Senator has completed his very stirring address and perhaps some other Member of the Senate might care to follow and then he would have another chance, under the rules, to start again on another day.

Mr. THURMOND. Mr. President, there are others who would like to speak. I just did not want to monopolize the whole day. The Senator from Nebraska, whose State has been affected by suits by the Federal Government in matters similar to this, which caused the Governor of Nebraska and the attorney general of Nebraska to be so strong against this bill, and various other Senators want to speak. I just thought I would finish.

Mr. BAYH. Mr. President, I would have to respectfully object.

The PRESIDING OFFICER. The objection is heard.

Mr. BAYH. Mr. President, I would be glad to participate in a colloquy with my friend from South Carolina. He made some critical statements that I would like the RECORD to show, if he has time to do that now. If not, he is probably pretty weak in the vocal cords here, although you cannot tell it by listening.

Mr. THURMOND. I am not weak in the vocal cords a bit.

Mr. BAYH. Would the Senator from South Carolina care to indulge in a little dialog?

Mr. THURMOND. Mr. President, I am catching a plane right around 3 o'clock and I hardly have time enough to get to my office and get things ready to go.

But the able Senator from Nebraska (Mr. EXON) was going to speak now. I thought I would complete my speech later. If I have to do it on another legislative day, I would do that.

Mr. BAYH. Mr. President, I think that the only fair way to run a filibuster is to, if you are going to make two speeches, have it count as two instead of one.

Mr. THURMOND. Mr. President, it is all one speech. I am just going to give part of it at this time but the rest later.

But if the Senator objects, he has a right to object.

Mr. BAYH. Mr. President, I would be glad not to object if we could have unanimous consent that, at the end of a reasonable time after the second speech, we have a vote on this. Could the Senator accept that compromise or that effort to try to move the legislative process?

Mr. THURMOND. Mr. President, to be perfectly frank with the Senator, this bill is so objectionable, it is so obnoxious, it is so dangerous, it is so unreasonable, it is so impractical, that I expect to oppose it with all the power in my soul to the last minute.

Mr. BAYH. That is a lot of power.

While the Senator is riding along, I wish he would ponder a couple of questions here. He made the statement that every hospital in his State is under the control of the Federal Government. Can the Senator tell us how that is the case?

Mr. THURMOND. On the regulations of the Federal Government. They met last year. We had a meeting up here. They were about to issue other regulations that would determine whether they could even have a hospital. Fortunately, we were able to get the man here at Federal level not to promulgate the resolutions he had planned to.

Mr. BAYH. Then it is not really fair to say that every hospital is under the control of the Federal Government.

Mr. THURMOND. Well, to a certain extent. They have to meet certain requirements. And I think the hospitals in the State, the schools in the State, and all the institutions in the State ought to have to meet the requirement of the States, not the Federal Government. Let the agencies of the Federal Government, the institutions of the Federal Government, meet the requirements of the Federal Government. That is my position. Of course, we do not agree on that.

Mr. BAYH. I understand that.

One other quick question. I know the Senator wants to catch that plane. Could the Senator tell us how this bill is worse than when it left the Senate?

Mr. THURMOND. Mr. President, I am going to tell the Senator that in the rest of my speech. I have to catch this plane now. But I expect to point out some differences on that. Of course, even if it was not any worse, it would be terrible. But it is even worse.

Mr. EXON. Mr. President, a point of order.

The PRESIDING OFFICER. The Senator will state the point of order.

Mr. EXON. Mr. President, who at this time controls the floor?

The PRESIDING OFFICER. The Senator from South Carolina has the floor.

Mr. THURMOND. Mr. President, I ask unanimous consent to yield to the distinguished Senator from Nebraska.

The PRESIDING OFFICER. Is there objection?

Mr. BAYH. Mr. President, reserving the right to object, the Senator from South Carolina has, I thought, yielded the floor and was going to go to South Carolina or some place.

Mr. THURMOND. Well, I am. But I wanted to yield to the Senator from Nebraska to speak while I am gone.

Mr. BAYH. Mr. President, a parliamentary inquiry.

Mr. THURMOND. Let me put my question, then you can object, if you want to.

Mr. President, I ask unanimous consent to yield to the distinguished Senator from Nebraska, with the understanding that I will not lose my right to the floor and, upon resuming, it will not be considered a second speech and that his statement will come at such place in the RECORD as appropriate.

Mr. BAYH. Mr. President, reserving the right to object, the Senator from South Carolina is such a thoughtful and cooperative colleague, I hate to do this to him, but I am going to have to object, because what he is trying to do is to be able to have a filibuster conducted, even while he is gone, in his name. Now, the Senator has a lot of power, but I do not think we ought to let him do that.

With all respect, I want to hear the rest of his speech, but let us let that happen as a second speech under the rules when he gets back. And if the Senator from Nebraska wants to be heard, he can claim the floor in his own right and I would be glad to listen.

Mr. THURMOND. Mr. President, does the Senator object to my stopping at this point?

Mr. BAYH. I object.

Mr. THURMOND. Mr. President, the Senator from Nebraska can get the floor in his own right.

The PRESIDING OFFICER. Does the Senator from Nebraska seek the floor?

Mr. EXON. Mr. President, the Senator from Nebraska does wish recognition. I was hopeful that I could receive recognition under the unanimous-consent agreement as offered by my friend from South Carolina.

I make the inquiry of the Chair as to whether or not there was a ruling made on what was raised by the Senator from Indiana. Can the Senator from South Carolina yield to the Senator from Nebraska, as he requested, without losing his right to be able to address the Senate on this subject on only one other occasion?

The PRESIDING OFFICER. Not without unanimous consent.

Mr. BAYH. Parliamentary inquiry. I suppose the Senator could advise the Senator from Nebraska that the Senator from South Carolina could yield to the Senator from Nebraska for a question.

The PRESIDING OFFICER. The Senator is correct.

Mr. BAYH. But I do not think that that is what the Senator from South Carolina and the Senator from Nebraska have in mind.

Mr. EXON. Mr. President, one further parliamentary inquiry. Under the rules of the Senate, can the Senator from South Carolina yield for a question to the Senator from Nebraska and then would have the control of the floor, as a result thereof, flow to the Senator from Nebraska?

The PRESIDING OFFICER. The control of the floor would still reside with the Senator from South Carolina, but he could yield for a question.

Mr. THURMOND. I could yield for a question, but if the question is very long, I would not be able to stay here and answer it. [Laughter.]

Mr. EXON. Mr. President, for the clarification of my friend from Indiana and my friend from South Carolina, the yielding to the Senator from Nebraska would not necessarily be a short-time question. It might be a question that would go on and on.

It might be a question that would go on and on and on for a considerable period of time. Since I am relatively new in this body, I am merely seeking clarification of what the rules are and what game we are going to be playing on this particular matter. I have considerable that I would like to say, as do others in this body, with regard to objection to this conference report. I guess I await the decision of the Senator from South Carolina as to whether or not he wishes to yield to me at this time or whether he wishes to yield to me for the purpose of a question. I think there is a considerable distinction on that with regard to control of the floor, the action taking place here. Therefore, I do not wish to rush the decision on my friend from South Carolina.

I certainly recognize the rightful parliamentary action being taken by my friend from Indiana. My friend from Indiana and I do not find ourselves on the same side on this particular issue.

Mr. THURMOND. Mr. President, I want to say while I am on my feet that I will object to any meetings by the Judiciary Committee or any hearings by that committee while this matter is under consideration and until it is disposed of. I have already sent my request in, but I want to be sure the majority leader understood that.

Mr. ROBERT C. BYRD. The Committee on the Judiciary, yes.

The PRESIDING OFFICER. The question is on the conference report.

Mr. BAYH. I am prepared to vote, Mr. President.

Mr. EXON. Mr. President, I rise in objection to the conference report on H.R. 10. We debated this long and loud here in the Senate a few short weeks ago. I wish to express my grave concern for the fact that the conference report between the House and the Senate did not even make any legitimate effort, as I view it, to meet some of the objections that a substantial number of the Members of the Senate had with regard to this measure.

I might be talking about the long history on this particular type of legislation in the Senate, what went into its original formation, the difficulties this body has had in the past for good and logical reason, in my opinion, to keep this type of legislation from ever becoming law.

I would address for the present time, at least, the considerations and concerns that I have with the lack of consideration that the conference committee gave with regard to the serious objections, legitimate objections, that many of us who have had experience in carrying out the laws, the dictates, and wrestling with the bureaucracy of the Federal Government have had as top elected State officials in the States of this Union.

I think it goes without saying that there seems to permeate a belief in Washington, D.C., on the banks of the Potomac that all wisdom flows automatically from the District of Columbia wherein resides the Capital of the United States of America.

I have found with great concern over the years that while there is professed time and time again the consideration that we do not know what is right automatically because we happen to be elected President of the United States or elected to the House of Representatives or elected to the Senate, sometime, somehow, after we get here there seems to begin to permeate the thinking of otherwise well-intentioned people that, after all, those people back there in the States really do not know what is going on, and the seat of power on anything and everything properly resides here in the Nation's Capital where we have all of the wisdom to do all of the things that are proper for all of the people of the United States of America.

Time and time again, Mr. President, that super wisdom, that super knowledge, that super power has been proven wrong. It has been proven as an invasion of the constitutional rights of the States. It has been proven that once again big Government continues to centralize its authority out of the Nation's Capital.

With all of the concerns that we have today in the international situation, with the concerns that we have with the domestic situation in the United States today, as far as our economy is concerned, there still remains one overriding fact. That fact is that with more and more centralization of government, with more and more dictates of power from Washington, D.C., with more and more building of the Federal bureaucracy, with more and more beefing up of the ever-increasing numbers of lawyers in the Justice Department to do their thing at the expense of the legitimate rights of the States, more and more we are certainly going to see, Mr. President, that that kind of activity from Washington, D.C., is going to cause further disillusionment over the years as far as the people of these United States are concerned.

During these times we are struggling to balance the Federal budget. Great debates that have taken place in this body and in the House of Representatives. Those conflicting opinions are going to continue when we take up the first concurrent budget resolution hopefully sometime next week if we can be successful in bottling up this unfortunate bill and sending it back where it belongs, wherever that is. If we can ever get that done, we might be able to take up the budget, which is of major concern, I believe, to most Americans as we face our ever increasing domestic problems.

Mr. BAYH. Will the Senator yield?

Mr. EXON. I will yield to the Senator from Indiana provided I am not yielding my right to the floor and provided when I resume it is not counted as a second speech on the current matter. I ask unanimous consent that, with those understandings, I be allowed to yield to my friend from Indiana for whatever question or statement he may wish to make.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BAYH. I appreciate the courtesy and the care with which the Senator from Nebraska yielded. I think he knows me well enough that I am not going to pull a quickie on him.

I was just suggesting to my friend from South Carolina that if we are all agreed that this is going to be extended debate, everyone should comply with the general rules and not try to fudge on them.

I would point out to my friend from Nebraska that I share his concern over the budget and I am ready to have it considered in 30 minutes. That will give the Senator from Nebraska 10 minutes to finish his statement, time for us to have a quorum, maybe the Senator from Indiana to have 5 minutes, vote on this measure, and then turn immediately to the budget. If we are really concerned about the budget, let us get to it right now.

Mr. EXON. Does the Senator wish to talk further?

Mr. BAYH. No, I can phrase that as a question, but I am afraid that it is not.

Mr. EXON. I would be happy if the Senator would.

Mr. BAYH. I think if the Senator from Nebraska is concerned about the budget, would it not make more sense to start on that right now?

Mr. EXON. I respond in this way, Mr. President: I appreciate very much the question being phrased by my friend from Indiana. For his information, suddenly, as of yesterday, at considerable surprise to myself and other Members who, the Senator from Indiana knows, oppose very vehemently this conference report, it was called up. It was my suggestion that, rather than bring up this conference report, we proceed with consideration of the budget and get to this conference report at some date after that more important matter came forward. For reasons that I am not sure of, it was decided that this matter should come ahead of the budget matter. I suspect, although I am not casting any aspersions on any strategy that anyone had in mind, and certainly not my good friend from Indiana, it may well be that the decision was made, Mr. President, that this is one of those matters that we can slip through the Senate very quickly because we are coming up against that budget matter.

As important as I think the budget resolution is, I am not ready for the quickie vote that the Senator from Indiana indicated he would be willing to agree to.

Mr. BAYH. Will the Senator permit me to make one comment?

Mr. EXON. I am glad to yield back to the Senator from Indiana so long as the previous statements I made continue to prevail at this time.

Mr. BAYH. I appreciate the point of the Senator from Nebraska.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BAYH. I am sure the Senator from Nebraska does not want to leave the impression that he was not fully aware of what was going on. At least a day prior to our bringing this down, he and others were approached to see if we could get a unanimous-consent agreement. Inasmuch as the budget was not ready to come on the floor—it has not been acted on in the House—it was the decision of the majority leader to bring this up. It is a conference report and has been through both Houses.

Let me phrase a unanimous-consent request to show my sincerity.

Mr. President, I ask unanimous consent that this matter be put aside and that it be voted on no later than 5 o'clock 3 weeks from today.

Mr. EXON. I object to that request.

The PRESIDING OFFICER. The objection is heard.

Mr. EXON. Obviously, what my friend from Indiana is trying to do, and certainly that is his right, as a parliamentary maneuver, is attempting to get a unanimous-consent time agreement so those of us who oppose this measure would agree not to carry on a long-term delay in consideration of this bill. Therefore, I object, despite the fact that I am sure he is offering that in all sincerity.

Mr. BAYH. Oh, the Senator from Indiana is being very devious in his request. He wants to show that the purpose of bringing this up now is not to intervene or delay the budget, that we are willing to accept this at a time when there has been adequate time to debate it. Three weeks from now gives plenty of time to point out the shortcomings of this report.

I also point out that my friend, much as I love him, is involved in using his rights, as are other of our colleagues, to just plain talk this conference report to death. The Senator from Indiana has a commitment to try to keep him from doing that. We shall have to see. I am committed to doing that and it is going to be an interesting opportunity to debate this issue.

Mr. EXON. I object to the unanimous-consent request as suggested by the Senator from Indiana. In order to show good faith, if we really do want to get at the budget, then I would offer a unanimous-consent motion that we simply put off the consideration of H.R. 10 until some time after the budget matter is disposed of.

Mr. BAYH. I object, unless the Senator is willing to put a time certain. Certainly, 3 weeks is enough time to put this off. In fact, if he wants to put it off 4 weeks and say 4 weeks from today, that by 4 o'clock 4 weeks from today, we would have a vote up or down on passage, then the Senator from Indiana would be willing to accept that or urge his colleagues to accept it.

Mr. EXON. I would not agree to set any time certain; for several reasons, I personally would object to that. I suspect that many of those who are alined with me in this effort will do everything we can to stop what we consider an unconscionable bill from becoming the law of this land. Therefore, I suggest that the suggestion for unanimous-consent agreements by my friend from Indiana and my substitute offer will not prevail.

Mr. BAYH. I think the Senator is correct. I appreciate his courtesy. It is always a pleasure to have a chance to participate in a little friendly disagreement with him, although I hate to do that because I have such great respect for him. I know his particular experience in the State of Nebraska, and have sympathy with him, having confronted that experience. That is why we spent hours and hours and wrote in numerous amendments to the original bill, in an effort to try to improve it to reach the problem so the Federal Government could not come in the dark of the night, invade a State and send in an FBI agent without even informing the Governor. I think the Senator from Nebraska has a legitimate complaint, but the fact is that if we defeat this bill, that is not going to prohibit the Federal Government from doing in other States what they did in the State of Nebraska, because they are doing that under the constitutional structure. We are writing in this bill prohibitions to keep them from doing that.

That is why it escapes the Senator from Indiana why the Senator from Nebraska feels offended. I know he is genuine. I think he has been wounded. But we are trying to perform major surgery here and see that no one else will be similarly wounded. I know he views this differently, but I hope he is fully aware of my sympathy and that we have gone a long way to keep this kind of thing from happening.

Mr. EXON. I thank my friend from Indiana. In all sincerity, I join with him and wish to say I agree that we have been old and good friends and we have general understanding and we seem to agree on most issues but not on this one. Specifically, I say to him that if the major surgery that has been supposedly performed in this bill is to satisfy the objections of the Senator from Nebraska, then it has been surgery without anesthetic, and I do not like it.

I say to the Senator from Indiana that, while I am sure that the way he views this, he has given in on some of the points that we raised, to continue what I began to say sometime ago, I am very much concerned that the conference report ignores—I emphasize "ignores"—the only amendment that was passed by the Senate on S. 10 as it originally came to this body.

I am sure the Chair will remember that when S. 10 was passed on a relatively close vote in the U.S. Senate, the only amendment that those of us who objected to the bill were able to get through the Senate—and I think that by only one or two votes after reconsideration—was a rather simple amendment by the Senator from Nebraska that said that before the Justice Department could launch into these lawsuits against the States and the institutions therein and the elected officials in those States, they at least had to check with the Department of Health, Education, and

Welfare to see whether or not the Department of Health, Education, and Welfare was, at that time, instituting actions under some of the laws that they have control over with regard to the channeling of Federal funds into some of those institutions.

We thought that was a rather reasonable amendment and, frankly, I was quite surprised when the managers of the bill did not agree to that by voice vote. They forced this body to a rollcall vote on that particular issue. Yet, after that one amendment prevailed, we trotted over to the House of Representatives, sold out lock, stock, and barrel, and did not even agree to the adoption of that particular amendment. I feel that that shows less than a full understanding of those of us who have had firsthand experience with the nearly uncontrolled bureaucracy of the Justice Department, located right here, in Washington, D.C.

I would certainly take issue with the thrust of the report. All that one has to do is to read the conference report and one would certainly understand, Mr. President, that it is more than anything else a citing of horrors, if you will, the abuse of some individuals in some of the institutions in some of the States.

Following up on what my distinguished colleague from South Carolina said, I think it would be foolhardy for anyone to assume that in all cases, everywhere, that every individual, regardless of his station in life or where he was a resident of an institution, has always been treated properly and fairly, in some consequences, even with regard to constitutional rights. But, therefore, that does not give us justification to step in with an all-encompassing bill.

I cannot agree with my friend from Indiana when my friend from Indiana indicates that this measure gives us the protection on some things that were brought home to us with this overbearing influence and attitude of the U.S. Justice Department in a particular case, involving right on point what this particular legislation is addressed to.

Mr. DANFORTH. Will the Senator from Nebraska yield for a question?

Mr. EXON. I am happy to yield for a question to my friend from Missouri.

Mr. DANFORTH. Mr. President, I would like to call the attention of the Senator from Nebraska to page 12 of the conference report and ask him if he believes that a particular paragraph which I will read is a matter of concern and whether or not it establishes the worst kind of precedent for the Congress of the United States to take in our view of the Justice Department.

The paragraph states as follows, and this is from page 12 of the conference report:

> Congress recognizes that before initiating litigation with respect to a particular institution, the Attorney General must, of course, thoroughly investigate such institution. It is anticipated that the States and relevant officials will cooperate in the investigative process. If there is a failure to do so, the Attorney General may consider this factor in taking any actions under this Act.

Restating this paragraph, a very short paragraph, only six lines long, that before commencing litigation the Attorney General will conduct an investigation and that it is anticipated that States will be cooperative with the Attorney General, with the Justice Department, in the investigative process. But if they are not cooperative, then, in not being cooperative, the Attorney General would consider this factor in deciding what further actions to take.

I wonder if this does not strike the Senator from Nebraska as being a very heavyhanded technique and a very, very poor precedent for the Congress to take in saying, in effect, to the several States and, really, the American people, that the Department of Justice is an investigative agency and that it is in our interests to cooperate with these investigations, and, if we are not in a cooperative mood and a cooperative spirit, then the Justice Department would bear that in mind in determining just how it wants to deal with us.

Mr. EXON. I thank my friend from Missouri for posing a question that I think is a case in point.

What we have done and the way this is raised in the conference report and in the bill is to really say to the Governors and attorneys general, and the other elected and appointed officials of the States, that unless they shape up, unless they cooperate with an investigation that big brother from Washington, D.C., thinks we should undertake, that we, therefore, will take that into consideration with regard to the future legal action we have taken.

The Senator from Missouri is a former, very distinguished head of the legal department of the State of Missouri, an elected official before he came to serve in this body, and he knows and understands very well the legal points and implications that have been raised.

Exactly, I say to the Senator from Missouri, exactly on point, and despite the legitimate understandings—legitimate understandings, I say, Mr. President—that my friend from Indiana and the other prime movers on this legislation, despite the fact that they think they have corrected this, I suggest that past practices and attitudes of the U.S. Department of Justice, and what I suspect will be ever-increasing encroachment of the bureaucracy in the Justice Department, would lead one to believe that the intentions of the act will not be followed, certainly the intentions of the act as explained by the Senator from Indiana.

I remind my colleague, Mr. President, that we will be citing during the hours and days of talks that will be made in this body, gross injustices, inconsistencies, and actions by the bureaucracy in the Justice Department.

Mr. DANFORTH. Will the Senator yield again for a question?

Mr. EXON. I am happy to yield to the Senator from Missouri.

Mr. DANFORTH. Mr. President, does it strike the Senator from Nebraska as being ironic—ironic in the extreme—that in a bill which is designed to further the civil liberties of citizens of the United States, that language such as that in the conference report which I read earlier is included in a conference report on such a bill? That is, what we are dealing with in this bill concerns the rights and the liberties of the citizens of the United States.

Now, whether or not the bill is an effective tool for accomplishing that objective is debatable and, indeed, the Senator from Nebraska and the Senator from Missouri would both take the position that this bill is not an appropriate vehicle for accomplishing that.

But, nevertheless, the objective of the bill is to purportedly further the cause of individual rights and individual liberties, but at the same time this very expanded version of the Justice Department is inserted in the conference report.

I was wondering if the nature of that irony struck the Senator from Nebraska, as it does the Senator from Missouri, that the Justice Department here would be viewed as an agency that it is really in the best interests of the American people to be cooperative with, and if we are not cooperative then we just better watch out for what happens next?

Mr. EXON. Mr. President, I think the point that has been made is another excellent one.

Frankly, to answer the question of the Senator from Missouri, I had not picked up that particular point. Once again, I believe it emphasizes the concerns that many of us have—that the Justice Department of the United States is delighted at the free hand, so to speak, they are going to receive if this bill becomes law.

Earlier, in response to a question, the Senator from Indiana indicated that he felt that because of the major surgery that has been done on this bill, the Justice Department would not be creeping into the States in the dead of night to pull some shenanigans on elected officials. I do not agree with the thrust of his comments, although I emphasize once again that I am sure they are well intentioned.

Basically, what this bill will allow if it becomes law is for the Justice Department simply to initiate on their own, almost any time they wish, an investigation of any person in any institution in any of the States of the United States of America—of their own volition.

What we are doing with the whole thrust of this bill is to make the Justice Department a czar, if you will, over all the institutions. In my opinion, it goes far beyond the matter of civil rights. It also goes far beyond—in remarks I will make later—the legitimate rights of the Justice Department to become involved in civil rights action.

As the Senator from Missouri knows full well, and as others of us know who have had firsthand experience and knowledge with this matter, in addition to the major concern I have of the Justice Department being given almost czar power over the institutions that are run by the States, at the expense of the States, we are having an argument

here, although it never has been brought out, about what kind of care—not just the quality of care—and treatment will be received, a philosophy of treatment, with regard to some of the individuals who are residents of State institutions.

Therefore, I ask my friend from Missouri, with the dialog that has been going on here and with his experience as an attorney general of Missouri, is he not concerned about the overpowering power and basic thrust this bill would give to the Justice Department in Washington, D.C.?

I would appreciate a response, if I could yield to the Senator from Missouri.

Mr. BAYH. Mr. President, I suggest the absence of a quorum, and I ask unanimous consent that it not be in any way interruptive of the rights of the Senator from Nebraska.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BAYH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. EXON. Mr. President, I ask unanimous consent that I may yield to the Senator from Missouri, without having my remarks today be counted and be confronted with a situation of only being able to speak on one more occasion under the rule.

Mr. DANFORTH. Mr. President, reserving the right to object——

The PRESIDING OFFICER (Mr. SARBANES). The Senator from Missouri reserves the right to object.

Mr. DANFORTH. I wonder whether the Senator from Nebraska would be willing to expand that unanimous-consent request to the effect that any remarks made by him or by me today not count in computing the maximum number of remarks that can be made in a single legislative day.

Mr. EXON. I will be happy to expand my request as outlined by the Senator from Missouri.

Mr. DANFORTH. So it is my understanding that the request would encompass not only the remarks of the Senator from Nebraska but also the remarks of the Senator from Missouri.

Mr. EXON. That is correct.

Mr. BAYH. Mr. President, reserving the right to right to object—and I shall not object—just from the standpoint of clarification, out of a spirit of friendship to both my colleagues, we want to permit as much leeway as we can to resolve this matter in an amicable way.

As I understand the unanimous-consent request, it would apply only to today's speech, and when it is concluded tomorrow, that will be the conclusion of one speech, and the second speech will be a new and second speech under the rules.

Is that the way the Senator from Nebraska looks at it?

Mr. EXON. If I understand the Senator from Indiana, I think we understand each other.

Basically, the unanimous-consent request I have proposed says that the remarks by the Senator from Nebraska and the remarks by the Senator from Missouri will not be counted as the two times we can talk on this subject. In other words, when we come in tomorrow or succeeding days, whatever agreements are entered into at that time will prevail. But the fact would be that the comments I have made and the comments he has made today will not be counted as our first address on this subject.

Mr. BAYH. Mr. President, further reserving the right to object—and I shall not object—I asked the question because I would not want anyone to misinterpret this, as to what the Senator said today, as not counting for anything. I want the proper interpretation to be placed on it.

Mr. EXON. I certainly want what is said today counted. I do not want it counted against me when I come back to the floor at least two more times.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request?

Mr. DANFORTH. Mr. President, further reserving the right to object, I am not sure that I understand exactly what is involved here. As I understand it, the nature of the unanimous-consent request is that the remarks of the Senator from Nebraska and the remarks of the Senator from Missouri not be counted for the purpose of computing the maximum number of speeches on the same subject.

Mr. EXON. The Senator is correct.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request? The Chair hears none, and it is so ordered.

Mr. DANFORTH addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri is recognized.

Mr. DANFORTH. Mr. President, at the outset, I should like to raise a matter which I think is indicative of the whole drift of this bill and which is a little different from the main thrust of the bill itself. It is a matter which deserves attention in its own right from the Members of Congress.

During the colloquy with Senator EXON, I read this six-line paragraph from the conference report. I should like to read it again, because it seems to me that it deserves very close attention.

On page 12, the conference report, middle of the page, the following paragraph appears:

> Congress recognizes that before initiating litigation with respect to a particular institution, the Attorney General must, of course, thoroughly investigate such institution. It is anticipated that the States and relevant officials will cooperate in the investigative process. If there is a failure to do so, the Attorney General may consider this factor in taking any actions under this Act.

Mr. President, consider the meaning of this paragraph. First, it states that the basic relationship between the Justice Department and the several States under House bill 10 is an investigative relationship. That is to say that it is the thrust of this bill that the Attorney General and the staff of the Justice Department assume an investigative posture with respect to State and local governments.

And, as a matter of fact, in similar cases already undertaken by the Department of Justice it has in fact been an investigative role that has been assumed. The Federal officials going into State institutions to investigate those institutions have not been consultants by any stretch of the imagination. They have not been professional people by any stretch of the imagination. The people who have gone into State hospitals and State schools for the retarded have had no professional expertise in the treatment of the mentally ill nor in the treatment of the mentally retarded.

They have not been physicians. They have not been nurses. They have no medical training. They have no psychiatric training. They do not carry the title "doctor" before their names. They have no necessary professional skills. They possess no expertise in the area of health or in the area of care for institutionalized persons.

They are investigators, and they are investigating, Mr. President, for one purpose: in preparation for litigation. Hence the words in the cited paragraph "Congress recognizes that before initiating litigation." The end product in this bill is litigation. The end product in this bill is a lawsuit.

So the people who go into State institutions do so in preparation for litigation. Who are these people, Mr. President? Who are these representatives of the Federal Government if they are not physicians or nurses or people with advanced degrees? Who are they if they have no expertise in health care and care for the mentally retarded, care for the mentally ill? They are FBI agents. That is who they are. They are FBI agents. They are dispatched, sent to State institutions by the Justice Department from the Federal Bureau of Investigation.

In my State of Missouri, this is precisely the experience that we had. I can remember the occasion very well. The Justice Department was commencing an investigation into the Missouri State schools for the mentally retarded, and during the early days of that investigation, the special agent in charge of the FBI in our capital city of Jefferson City, Mo., came to visit my office. I, at the time, was the attorney general of our State. The special agent in charge of the Federal Bureau of Investigation in Missouri was at the time and I believe still is a man named Tom Weaver, a very excellent person. He came into the office and he talked to the chief of our litigation division. Note: The FBI talking to the chief of our litigation division about our State schools for the retarded. And he said that he had been instructed by the Civil Rights Division of the Department of Justice to conduct an investigation into our State schools.

And he further stated that that investigation would entail a number of weeks and that a large number of FBI agents would have to be dispatched into our State institutions for a number of weeks to conduct that investigation.

So essentially it is an adversary rela-

tionship between the Federal Government and the State government, a relationship which involves litigation as its end product, not improving the plight of the retarded or the mentally ill, or prisoners in penal institutions but instead litigation and involving the dispatching of FBI agents.

Mr. President, I have a very high regard for the Federal Bureau of Investigation. Its present Director, William Webster, is a citizen of my State and he is a person I have known for a great many years. I believe I am the only Member of the Senate to have ever tried a lawsuit in front of Judge Webster when he was on the Federal bench. He is an outstanding lawyer. He has the respect and the admiration of the people of his State.

His immediate predecessor was also a Missourian and still is. He has moved back to his city of Kansas City. Clarence Kelley before he was appointed Director of the FBI was the police chief of Kansas City, Mo.

So I have a very high regard for the FBI and for its image and for the kind of highly professional organization it is. But, Mr. President, that admiration is not universally shared by all the people of the United States. There are those who view the Federal Bureau of Investigation as being a very threatening organization. There are those who, when they hear the very name "FBI," shudder. For most of its history, the FBI was run by a man named J. Edgar Hoover. Some say that his name should be removed from the FBI building. They say that he abused his power. Now is not the time to go into that. But the fact of the matter is that the FBI is a formidable organization. It is an organization which in the minds of many inspires not trust but fear. When they hear of the FBI, they are fearful, and when they are told that they are under investigation by the FBI, they are especially fearful. And what we are involved in in these institutionalized persons' lawsuits are FBI investigations.

Can you imagine, Mr. President, the thought going through the minds of well intentioned highly professional employees of State institutions for the mentally retarded when an FBI agent shows up at the door and flashes his identification and states that he is agent so and so of the Federal Bureau of Investigation and that the institution is going to be investigated? Can you imagine what that does to the morale, what that does to the spirit of State institutions? The people who are employed by State institutions have nothing to do with the practice of law. They are not used to enforcement officers and law enforcement techniques. They are hardly criminal types.

(Mr. BOREN assumed the chair.)

Mr. DANFORTH. The people in charge of the institutions usually are medical doctors, sometimes people with Ph. D. degrees. The people who work in the institutions may be doctors, nurses, psychiatric personnel, vocational therapists, physical therapists. These are the people who work in the institutions.

They are there one day trying to do their job, usually at precious little pay, and who shows up? The Federal Bureau of Investigation. Detectives, gumshoes, armed with cameras and clipboards, with their sole purpose in mind, following instructions of the Justice Department, to help prepare a case for litigation. That is the nature of this relationship, investigation and litigation.

So the Attorney General, it says in the conference report, must, of course—which is the language of the conference report, must, of course—thoroughly investigate such institution.

Mr. President, I can tell the Senate on the basis of my own experience as the attorney general of the State of Missouri that those investigations are, in fact, thorough, extraordinarily thorough. They go on week after week after week after week. They involve countless investigating personnel.

I can remember very well talking to the superintendent of the State school for the mentally retarded in Marshall, Mo., one Adrienne McKenna, a very outstanding public servant, truly dedicated, doing a magnificent job. She told me when the FBI came through their institution they literally opened every single door; FBI agents—Justice Department agents at this point, not FBI, but people with the Civil Division of the Justice Department, in their preliminary investigation before the FBI was to come in, the Justice Department personnel literally opened every door, including, according to Mrs. McKenna, the fact that the Justice Department lawyers went into the basement of the State school and hospital in Marshall, Mo., and opened closet doors in the hospital.

Justice Department personnel, when they went through our State schools, were told, "You can look around, fine. But one thing we would rather have you not do is look into the personal medical file of individual patients. Those are private matters. A person's medical file is a private matter. Don't look into those."

The Justice Department personnel nodded their heads, fine. Yet when the employees of the State Division of Mental Health had their backs turned, and they turned back again, they noticed the Justice Department lawyers literally grabbing patients' charts off the walls and rustling through them.

Yes, investigations will be thorough under this bill; they will be very thorough.

One story of what happened in our State, before the FBI ever got into the act Justice Department lawyers were going through one of our State schools, and they were unattended for a brief moment, and I guess that is a mistake—you always have to watch these people—they were unattended for a brief moment, and then one of them was caught rummaging through the desk of one of the employees of the State of Missouri.

That is what is entailed, I guess, Mr. President, under the rubric of a thorough investigation, to look through closets, to look through patients' medical records, to rummage through other people's desks when those people are not around.

Thorough investigations in preparation for litigation, that is what this bill is all about.

Then the paragraph goes on, Mr. President, and says:

> It is anticipated that States and relevant officials will cooperate in the investigative process.

To repeat, it is anticipated that the States and relevant officials will cooperate in the investigative process.

Mr. President, is that how we view the investigative process in the U.S. Senate?

Is that how the Congress of the United States feels about those who are being investigated—it is anticipated they will be cooperative, we say? It is anticipated that the State schools and hospitals will be cooperative, that State officials will cooperate with the Federal investigators? It is anticipated that those who are under investigation will go along with it, will roll over and play dead, will do what they are told—"You will be cooperative, Mrs. McKenna; you will be cooperative, Dr. Hensley; it is anticipated that you will be cooperative with the FBI." Is that what the Senate thinks of the Justice Department? Is that what the Senate thinks of FBI investigators? Is that what the Senate thinks of State and local employees? Is that the Senate thinks of the American people? Is this the new standard, Mr. President—we expect the people to be cooperative with their investigators? We expect them to go along? You can almost hear the strong German accent behind such a statement.

The paragraph continues:

> If there is a failure to do so the Attorney General may consider this factor in taking any actions under this act.

Cooperate, cooperate, "and if you do not we will take that into consideration."

Mr. President, during the early part of the last decade, the early 1970's, this great country underwent one of the most wrenching experiences of its existence—wrenching. I regret to say this took place under the Presidency of my own party.

It was a Republican who was President of the United States; his former campaign manager who was the Attorney General of our country. It was a Republican administration, a Republican FBI, a Republican CIA; Republican investigative agencies. It was not even a decade ago.

Think of the attention that was focused by the American people on that great catastrophe of Watergate. A lot of the attention, of course, was directed at the person of the President himself. But much of the attention was directed at more than the President. It was directed at our institutions. It was directed at the CIA. It was directed at the FBI.

Some people believe that, in trying to correct the problem of the misuse of investigative power, we overdid it; that we put too many parameters on our Central Intelligence Agency. Some people believe—and I am one of them—that the United States does not now maintain the kind of intelligence capability we need to protect the vital interests of our country.

Be that as it may, it seems like only yesterday that we were concerned about abuses of the Justice Department. It seems like only yesterday when we were concerned about what Government could

do to the American people, not in the name of some sinister motive, necessarily. But that is what happens when power is absolute and when power is unchecked. Investigative agencies can be misused. The American people can be threatened by them.

Mr. President, in this country, before we even adopted our Constitution, we, as a people, recognized that Government could not be absolute. We recognized that we would not grant to any governmental agency absolute power. Power corrupts and power corrupts absolutely. And so we would try to restrain the use of power.

Then, not even a decade ago, we became concerned about a very particular type of abuse of power, the abuse of investigative power, the abuse of power by Federal investigative agencies, by the FBI and by the CIA. Those were the concerns that grabbed the attention of the people of our country.

And now a committee report coming out of the Judiciary Committee of the Senate and the Judiciary Committee of the House of Representatives has language like this. Two committees, consisting almost entirely of attorneys; two committees of the Congress of the United States charged with the special duty to look at our legal system, to look at our constitutional system; two committees with that kind of special responsibility. And they produced in their committee report this language:

> Congress recognizes that before initiating legislation with respect to a particular institution, the Attorney General must, of course, thoroughly investigate such institution. It is anticipated that the States and relevant officials will cooperate in the investigative process. If there is a failure to do so, the Attorney General may consider this factor in taking any actions under this Act.

Mr. President, I think that there are very serious issues involved in this conference report, very far-reaching issues, but I believe that one of the crucial points is embodied so clearly in this single paragraph of the conference report.

I believe that this language is unworthy of the U.S. Senate. I believe that this language is unworthy of the Congress of our country. I believe that this language is flatly contrary to what we believe in in America, to our whole standard of justice, the notion of the investigative relationship between the Federal Government and the rest of the country, the notion of FBI agents being dispatched in the State institutions and the notion that persons in those institutions are expected to cooperate.

(Mr. MUSKIE assumed the chair.)

Mr. DANFORTH. Mr. President, I can imagine circumstances in which the cooperative spirit of State and local personnel would be sorely tested.

Let me give the Senate an example or two of what I mean. When the Justice Department arrived in the State of Missouri—and I will go into this in greater detail—and the first meeting was held between the Justice Department lawyers and our State personnel, that meeting occurred at our State school for the retarded in Nevada, Mo.

Here is the first question asked of our State officials by the Federal investigators:

> How many people have died in this institution because of inadequate medical care?

That was for openers.

Mr. President, assuming people are of normal sensitivity and normal pride in what they are doing with their lives, what kind of a question is that to ask, when people come in from Washington, employees of the Justice Department, lawyers, litigators, and ask the question:

> How many people have died in this institution because of inadequate care?

Imagine the same question being asked of other people not State employees. Assume that the Senate takes a dim view of State government, assume that the Senate takes the view that people in State government are some lesser kind of life. I do not share that view. It certainly is implicit in this particular bill. I do not share it. But just assume that point of view.

Apply the same question to somebody else, some other kind of professional. Imagine, Mr. President, going to, say, Georgetown Hospital in Washington and finding some doctors in that hospital and going up to those doctors and saying: Well, how many people have died when you have treated them because they have had inadequate care from you?" Is that the kind of question keyed to bringing out a cooperative spirit from the doctors?

All of us in the Senate have been on the public stump. Sometimes, when we are tired after a long day of work, we are in a public forum of some kind and somebody will ask us a question that will go right to the nerve. We are professionals. We are used to being tested by questions—sometimes tough questions. But even we, professionals in being tested in such manner, sometimes react to the strain in less than the spirit of cooperation and understanding. Sometimes we snap back. Sometimes we show a little temper.

Here are people who are not used to being questioned in this manner. Here are people who have not been in the political forum.

They are not politicians. They are not lawyers. They are not used to verbal combat. They are professional people, sensitive people, physicians, nurses. They are people who have committed their lives to helping people who are the most unfortunate members of our society.

Suddenly, litigators approach them and litigators say to them, "How many people have died under your care because of inadequate care by you?"

Mr. President, it is certainly understandable, is it not, that given such a question under such circumstances posed by litigators of the Justice Department, State officials would be somewhat less than cooperative in their response? They might be unnerved. They might be very. very testy. That is human nature, is it not?

Now let us push the question one step further. Let us suppose that it is not just a single opening question by a small group of Justice Department lawyers. Let us suppose that the FBI has been assigned to this institution. Let us suppose that for weeks a large team of FBI agents has moved through the institution, has opened the doors of every closet, every room. Let us suppose that FBI agents have been seen rummaging through people's desks. Let us suppose that they have wrested medical charts from racks, from the walls where they are hanging, and have rummaged through their medical charts when they were asked, "Please do not get into the personal affairs of a patient."

Let us suppose, Mr. President, that this has gone on not just for an hour, for a day, or for a week, but that it has gone on for week after week after week, that people who are trying to do a good job working for the State or working for local governments caring for the least fortunate members of our society have been faced with this kind of situation.

It is not an easy matter to be employed by a State psychiatric hospital or a State school for the mentally retarded. It is a very challenging job indeed. It is a job which tests one's patience. It is a job which is extremely demanding under the best of circumstances.

And suppose that on top of the usual trials, demands, of this kind of public service job, for week after week after week after week squads of FBI agents are roving through the State institutions, trying to talk to patients, asking insulting questions. Suppose that after weeks, maybe months, of this kind of slow water torture some of the employees of these State institutions begin to get their backs up and begin to say, "No, we are not going to cooperate any longer." Then what would happen? Is this not the normal kind of human reaction, Mr. President? It was in the State of Missouri. I can tell the Senate that. After a few weeks of this, before the FBI got totally into the act, before their squads were even dispatched, I, as the attorney general of our State, said, "Enough is enough. The FBI will not be permitted in our State institutions. The Justice Department will not be permitted to come in. File a lawsuit, if you want. We will at least have the protection of discovery from the courts, normal protection from harassing discovery techniques. But, no, we are not going to let you in, just invite you in, to harass our people any more."

So I was not cooperative. The attorney general of the State of Missouri was not cooperative, given the kind of baiting that we had experienced from the Department of Justice.

According to this conference report, such lack of cooperation, testiness, if you will, will be considered. "The Attorney General may consider this factor in taking any actions under this act."

Mr. President, is this America? Is this really what our country is all about? Is this really what the American system of justice is? The investigator will investigate. The investigator will expect cooperation and if he does not cooperate the Attorney General, in deciding what action he will take, will take this lack of cooperation into account.

Mr. President, under the fifth amendment to the Constitution of the United States we treat people suspected of crimes better than we treat employees of State governments under this bill. We accord people who are accused of crimes, suspected of crimes, rights against self-incrimination.

We say, in fact, that a prosecutor may not comment in court on the refusal of a defendant in a criminal case to testify against himself, to take the stand. He may not comment on it. Elaborate rules have been devised in order to protect people who have been accused of crimes or suspected of crimes. The Supreme Court has spoken many times. Every police officer in this country carries a little plastic card in his pocket stating what warnings he has to give people who are arrested, that they have a right not to talk, that they do not have to cooperate at all. They do not have to do anything to cooperate with investigative authorities. And the decision when to act and when not to act, when to punish and when not to punish, is not under our system of criminal justice made in accordance with whether or not there will be cooperation with the investigation.

And yet, Mr. President, in the conference report, the Congress of the United States says that, "If there is a failure to cooperate, the Attorney General may consider this factor in taking any actions under this act."

Mr. President, there are many things wrong with this bill. This bill is wrong in concept. This bill is a terrible step for the Congress to take. I felt this way long before I saw this particular paragraph in this conference report.

But by golly, what a terrible step it is for the Congress of the United States to adopt a conference report with this kind of language in it. What a terrible, terrible precedent it is for the cause of justice in this country and for our whole view of the relationship between the Department of Justice and investigative agencies and the rest of America.

I daresay that if the language in this paragraph were read to the American people, they would rise up against the Congress, as well they should. We have fought too many battles in too many parts of the world against this kind of thing. We have been so careful, so solicitous in protecting our people from this kind of thing. Watergate—the misuse of governmental power, the misuse of Justice Department power, the misuse of FBI power—turned the stomachs of the American people, and for good reason. This is turning the clock back. This is a direct assault on everything we believe, and we are asked to adopt this, and we shall be able to vote on this, yea or nay, in a vote in the U.S. Senate.

So let us consider that. Let the Members of the Senate consider this language. I hope that, sometime before we vote on this conference report, each Member of the U.S. Senate will turn to page 12 of the conference report, will look to the third full paragraph on that page, and will read it and ponder it long and hard, and will ask himself or herself, "Is this what it really means to have a system of law? Is this what the Justice Department is really all about?"

Is it up to the American people and their local governments to cooperate? "It is in your interest to cooperate. If you do not cooperate, it will be held against you."

Mr. President, I have mentioned the situation in our State of Missouri, and I should like to indulge the Senate, if I may, in describing our situation at some length, because I believe it is such a classic case of the abuse of Federal power. I think that exactly the kind of thing that we experienced in our State, back in 1975, is going to be repeated over and over again under this bill. Therefore, because I really believe that the Senate should have the advantage of knowing how something like House bill 10 will work in practice, an airing of this particular situation is worthwhile.

Mr. President, the story begins with a letter I wrote as attorney general of the State of Missouri on January 30, 1975, to the Honorable William B. Saxbe, Attorney General of the United States, Department of Justice, Washington, D.C.

DEAR MR. SAXBE: This letter is to protest the tactics which have been used by the Department of Justice in its investigation of our state schools for the mentally retarded. These tactics, which will be described herein, have included deception, circumvention of this office, lack of candor, ludicrous demands for detailed information, and threatened dispatch of teams of FBI agents into our state schools for the mentally retarded. What follows is a chronological description of the activities of your personnel, together with my comments on those activities.

In the week of October 15, 1974, a Mr. Michael Thrasher, who turns out to be Chief Counsel for the Office of Special Litigation of the Civil Rights Division of the Department of Justice telephoned Dr. C. Duane Hensley, Ph.D., at Dr. Hensley's office in Jefferson City. Dr. Hensley is Division Director of Mental Retardation and Developmental Disabilities of our Missouri Department of Mental Health. Mr. Thrasher told Dr. Hensley that he, Mr. Thrasher, was with the Justice Department, but did not indicate that his job there was special litigation. Mr. Thrasher told Dr. Hensley that he was frequently in this part of the country, that he had planned a trip to Kansas City and Jefferson City for October 29, 1974, and that as long as he was in the area, he would like to stop by Dr. Hensley's office for a chat.

Thereafter, on October 29, 1974, Mr. Thrasher called on Dr. Hensley in Jefferson City. Mr. Thrasher was accompanied by a Mrs. Susan Lentz. They met with Dr. Hensley for about three hours that day in an atmosphere which was disarmingly informal. At no time did Mr. Thrasher or Mrs. Lentz volunteer that they were active in special litigation. At no time did they indicate that our state schools for the mentally retarded were under investigation by the Department of Justice. At no time did they communicate with my office or suggest that Dr. Hensley seek the counsel of my office. On the contrary, Dr. Hensley now states that the demeanor of Mr. Thrasher was so informal that Dr. Hensley felt as though he were being interviewed for a job.

On the next day, Mr. Thrasher and Mrs. Lentz returned to Dr. Hensley's office. At this time. Dr. Hensley became suspicious, and asked them exactly what they were doing in Jefferson City. Then, for the first time, they disclosed that they were visiting several states with a view to possible litigation concerning whether patients in state schools for the mentally retarded are receiving constitutionally adequate treatment.

At this point, let me say that in my experience it is the universal practice of attorneys to communicate with parties or potential parties to litigation only through attorneys, if the attorneys are known. It is common knowledge that a state's attorney general is the attorney for the state, and usually for its agencies. Regrettably, this universal courtesy was not accorded my office by the Department of Justice. It would have been so easy for Mr. Thrasher to call me or one of my assistants to inform me that he wanted to question Dr. Hensley about possible litigation. Mr. Thrasher did not do so. Instead he used the tactic of stealth to slip quietly into Jefferson City. And being here, he declined to put his cards on the table, and tell Dr. Hensley the purpose of his visit.

Dr. Hensley next heard from the Justice Department in a November 5, 1974, phone call from Mrs. Lentz followed by a letter of the same date. A copy of the letter is attached for your information. It announces a schedule of a four day tour of the state by Mrs. Lentz and two other employees of the Department of Justice, to begin two weeks after the date of the letter, and it sets forth two single spaced pages of statistical information and records which it asks Dr. Hensley to have available on November 21.

Once again, no effort was made by the Department of Justice to communicate with this office, nor did Mrs. Lentz give me the courtesy of a copy of her letter to Dr. Hensley. The apparent view of Mrs. Lentz was that the Department of Mental Health should blindly cooperate with her preparation for litigation, conduct tours for her, prepare statistical reports so she could gather her evidence, and not advise its own counsel of what was going on.

Fortunately, Dr. Harold Robb, Director of the Department of Mental Health did advise this office of the visit by Mrs. Lentz and her two colleagues, and my assistant, Paul Allred, was able to be at the state school at Nevada, Missouri, as the inspection tour commenced.

Beginning November 20, 1974, Mr. Allred and personnel from the Department of Mental Health conducted Mrs. Lentz and her colleagues on an exhaustive tour of our state schools for the mentally retarded at Nevada, Marshall and Higginsville. The tour of Nevada lasted about seven hours, of Higginsville about five hours, and of Marshall about seven and a half hours. Throughout this tour, the investigative team took what appeared to be elaborate notes on their observations.

Prior to commencing the tour at Nevada, Assistant Attorney General Allred told Mrs. Lentz and her colleagues that he would be happy to have them tour our schools for the mentally retarded, but that he expected openness and candor from the Department of Justice in return. Unfortunately, such candor was never forthcoming. On the night of November 21, after the visit to Marshall, Mr. Allred asked the Department of Justice team to relate to him their findings and conclusions to date. They flatly refused to discuss their findings and conclusions with him, except that one member of the team said that conditions at our state schools were better then he had been led to expect. Based on the lack of openness on the part of the Department of Justice team, Mr. Allred advised them that he would not accompany them on a tour of the state school at St. Louis, and that they did not have permission to visit that facility.

In addition, at that time, Mr. Allred stated to Mrs. Lentz that the time had come for the Department of Justice to explain to me exactly what the basis was for its investigation and what its findings and conclusions were to date. He stated that the De-

partment of Justice could not reasonably expect to receive even more cooperation from state officials without first extending to me the common courtesy of an explanation of why the Office of Special Litigation was conducting an investigation in Missouri. Mrs. Lentz inquired about my schedule for the following Monday, and assured Mr. Allred that such an explanation would be forthcoming from the Department of Justice immediately. It never was.

Throughout the two day period Mr. Allred spent with Mrs. Lentz and her investigative team, he repeatedly stated that Missouri would welcome any suggestions the Department of Justice might have for further upgrading our program for the mentally retarded, and that we would prefer to make any improvements without the need for expensive and time consuming litigation. At no time has the Department of Justice offered any constructive suggestions to us. Indeed, since the beginning of Mrs. Lentz's tour of our state schools, the impression given to us has been that of people who have made up their minds that their only interest has been to go to court.

(Mr. DECONCINI assumed the chair.)

Mr. DANFORTH. Mr. President, parenthetically and before resuming this letter, let me make a couple of points.

The first is that it was absolutely clear to our State officials in Missouri that the purpose of the Justice Department investigation was exactly the purpose set out in House bill 10. That is, to prepare for a trial in court, to prepare a case for litigation, that the purpose was not to be cooperative, not to be helpful, not to be outgoing in the sharing of information with State officials, but instead, that the entire thrust of the Justice Department's activities was to go to court, to go to trial, to have a case in litigation.

They were investigatives. They were litigators, lawyers used to the combat of being in the courtroom, not professionals in health care, not professionals in taking care of those who were mentally retarded. Not at all. Investigators. Justice Department personnel.

That is the first parenthetical point I would like to make at this point.

The second is this. It will be noted in this letter that having been pushed by the Department of Justice, the reaction of State officials in Missouri was to be noncooperative.

That was my reaction. That is the natural reaction of another lawyer presented with a possibility of litigation, not to be outgoing, not to offer things, but instead to try to resist the open-ended type of investigation taking place without any protection for the State at all.

So we were not cooperative after a point.

According to the conference report, such a lack of cooperation would be held against the State of Missouri because, again, the conference report expressly states that it is anticipated that the States and relevant officials will cooperate in the investigative process. If there is a failure to do so, the Attorney General may consider this factor in taking any actions under this act.

Mr. President, to continue reading the letter to then Attorney General Saxbe:

The next known development in the matter was a visit to Mr. Allred by Mr. Tom Weaver, a special agent of the Federal Bureau of Investigation stationed in Jefferson City. Mr. Weaver informed Mr. Allred that the FBI had received a request from the Office of Special Litigation for the Civil Rights Division of the Department of Justice. Mr. Weaver said that the Office of Special Litigation had requested a field investigation by the FBI of certain institutions operated by the Department of Mental Health. He explained that the investigation would probably require the assistance of approximately ten agents working for several weeks in each institution. He identified the institutions as the state schools for the mentally retarded at Nevada, Marshall, Higginsville and St. Louis, and the State Hospital for the Mentally Ill at St. Louis. Mr. Weaver said that he had a very specific list of the information requested by the Office of Special Litigation.

Again, Mr. President, it should be noted that this was no trivial investigation. It was, in the words of the conference report, a matter to be thoroughly investigated in preparation for litigation. So the FBI agent in Jefferson City instructed the Attorney General's office that his investigation into our State's schools probably would require the assistance of approximately 10 agents working for several weeks in each institution.

Continuing with the letter:

Mr. Weaver related in some detail the information desired from the Department of Mental Health, but he stated that he was unable to inform Mr. Allred of the specific purposes of the investigation. He stated that information would be solicited from the superintendents, various employees and records of the institutions. Mr. Allred asked Mr. Weaver if an attorney from this office could be present during the FBI investigation. Mr. Weaver said that it was the policy of the FBI not to allow an attorney to be present, but that he would relay Mr. Allred's question to his superiors.

Mr. President, it is well known that under the Miranda case, a person who is accused of a crime has a right to call a lawyer, has a right to have the lawyer present when he is questioned, when he is investigated. That right does not apply under the bill which is now before us. under the conference report now before us, and it does not apply to the methods of the Justice Department in investigating State institutions.

Again, under this bill, we treat a person accused of criminal activity much better than we treat people who are employed by State institutions.

Resuming the letter:

After Mr. Weaver's visit, Mr. Allred telephoned Mr. Thrasher. Mr. Allred asked that he receive a copy of the request made by the Office of Special Litigation to the FBI. Such a copy was turned over to us, and is attached to this letter. In addition, Mr. Allred suggested that Mr. Thrasher come to Missouri to discuss with us the findings and observations of Mrs. Lentz and her investigative team. Mr. Thrasher stated that he would be happy to come to Missouri, but that he would not share with us the findings and observations of Mrs. Lentz and her investigative team.

In point of fact, Mr. President, I had at one point—I do not have it in my hands now—a list of the information that the FBI wanted in its investigation. Suffice it to say that it was extraordinarily detailed, that it was quite long and complex, and that it was the kind of the thing that investigators and lawyers look for in trying to make a case against somebody. It was not objective information at all. It was not the kind of information that a person with an open mind would seek. It was information obviously aimed at making the worst case.

In point of fact, Mr. Weaver stated that he had been instructed that the FBI agents involved in this investigation should carry cameras with them and they should take pictures, not of everything they saw but only the worst things they saw; that if they saw anything dirty, anything messy, anything that looked crowded, that was what they were to take pictures of.

That was the nature of the investigation. I think it is fair to describe the general demeanor of Mr. Tom Weaver as being embarrassed by the entire proceeding.

I resume the reading of the letter:

Mr. Saxbe, it is not the purpose of this letter to discuss the merits of our state's program for the mentally retarded. But without getting into the merits of our state's program, I can assure you that the program has a high priority in Missouri, and that those who operate it are people of good will. The leadership of our Department of Mental Health is not offended by constructive advice from well meaning people. But the Department of Mental Health is upset by the approach and attitude of the Department of Justice.

Mr. President, when this bill was on the floor of the Senate, I offered an amendment in the nature of a substitute to set up a cooperative effort on the part of Federal, State, and local officials, to try to come together in a constructive approach to improving the conditions in all kinds of institutions, whether run by the State governments or local governments or, indeed, by the Federal Government. It was the approach taken in that amendment that the answer to the problems of State institutions and other institutions was not in lawsuits but, instead, was in trying to come together in a cooperative effort to solve a common problem.

I suppose we live in an age of litigation, in which we assume that every problem can be solved by taking it to court.

Mr. President, returning to my letter to then Attorney General William Saxbe on January 30, 1975, the letter continues as follows:

The Department of Mental Health is, as you can imagine, quite accustomed to investigations of various sorts. As one state hospital superintendent has put it recently,

"(W)e are continually and perennially investigated by persons representing medicare and medicaid and we have our own internal investigations such as by the Utilization Review Board, Medical Records Committee, and the State Committee on Hospital Accreditation—all of which are an effort to monitor and improve functions."

However, in the present instance, the possibility of disruption is especially great. Dr. Harold Robb, the Director of the Department of Mental Health, has told me that the earlier visits of Mrs. Lentz and her team caused numerous alarmed phone calls from superintendents at the state schools expressing their concern about the demoralizing effect of the procedures in this investi-

gation. I have asked Dr. Robb and Dr. Hensley how much effort it would take to compile the information called for in the memorandum to the FBI. They have informed me that in each of the five institutions it would take approximately five key people six months. Dr. Robb and Dr. Hensley are both especially concerned with the effect on the morale of the staff and parents of patients of sending ten FBI agents into each of the state schools and into the state hospital at St. Louis for periods of several weeks.

It is my present position that our state officials have been more than cooperative with the Office of Special Litigation. Unfortunately, cooperation has not been a two way street. I have advised our Department of Mental Health not to furnish further aid to the Office of Special Litigation until you can convince me of the good will of your Department. I should be delighted to discuss the matter with you in Jefferson City, at your convenience.

Sincerely yours,

Signed by my name.

Mr. President, let me make the following comments about the situation portrayed in this letter.

The investigation threatened by the Office of Special Litigation to be conducted by the FBI was no trivial matter. It was an investigation which had its costs. The costs were measured in terms of dollars, they were measured in terms of time, and they were measured in terms of morale.

The officials of our State mental health program at that time, two professional people, Dr. Robb and Dr. Hensley, examined the memorandum to the FBI stating what information would be needed, and they concluded on the basis of their professional judgment that in each of the five institutions to be investigated it would take approximately five key people in five different institutions 6 months to simply gather the information requested by the Department of Justice.

Mr. President, in Washington I suppose that sounds like absolutely nothing at all. Five people by our standards mean nothing. What are five people in this massive bureaucracy that we call Washington? Why we can hardly get the buildings up fast enough to house the bureaucracy. Five key people are but the twinkling of an eye in our Federal Government here in Washington.

So when we hear in the Chamber that all that is involved are five key people in each of five institutions for 6 months we might be tempted to say what is that, a mere 25 people for 6 months? What is that? What is the problem with that? Why not have these people use their time to gather information for the Justice Department?

But, Mr. President, in State programs or in local governmental programs five key people can make all the difference in the world between an effective program and a not effective program. Five key people in the setting of a State institution can have an enormous effect in the day-to-day operations of that program.

So the kind of requests for investigative information made back in 1974 and 1975 of officials in the State of Missouri would have meant the enormous investment of key manpower in the light of the totality of the programs in Missouri.

Second, it was very costly in morale, and this was a point that was repeatedly made by Dr. Robb and Dr. Hensley. Here were two individuals who were trying to run a first-rate State program, and I believe, at least at that time—and I cannot speak about the present time—when I was in the State government in Missouri, that our program for institutionalized persons in the State Department of Mental Health was truly outstanding, operated by very, very dedicated men and women.

According to them, just on the basis of their personal experience, their personal knowledge of the situation in our State, there was a devastating effect on morale, and not just the staff's appearance.

Mr. President, during consideration of this bill, when it was on the floor of the Senate, just by chance I was visited in my office here in Washington by a man whom I have known for some years. His visit was on another matter, but it happens that this man has two children, twin children, who are patients at our State school for the retarded at Higginsville, Mo.

The father of two retarded children in one of the schools investigated under this program was visiting me, and I cannot tell you how encouraging he was to me in his urging me to fight this bill, and in his view of the devastating effect of this bill on the morale of parents of retarded persons, and of personnel in these State institutions, a devastating effect.

He saw the threat in this bill, and he saw the threat in the kind of investigation that was about to begin in the State of Missouri, even in the early stages of it before the FBI got into the investigation, when it was just the Office of Special Litigation in the Justice Department that was involved.

I had the experience of touring our State schools and talking to the personnel and getting their reaction to what was going on. Mr. President, these people who work in State institutions are not cruel, vicious people. I think sometimes when we go to the movies and see something like "One Flew Over the Cuckoo's Nest," we assume that people who are employed in such institutions must be some kind of fiends.

That is not the case at all. There is nothing evil about them or sinister about them. They are not abusing people. They are not on some kind of weird ego trip. They are dedicated and devoted.

Dr. Hensley, who was referred to in this letter, at the time it was written, was the director of our program in the State of Missouri for retardation, and it is an enormously sensitive human being I am speaking about, and I can remember talking to him at this time about the nature of his interest in retardation. He said the reason for his interest is that one of his own siblings—I cannot remember whether it was a brother or a sister—was retarded, and that is how he got into this field.

So the notion that these people who work in these institutions have something wrong with them and we can just feel free to be insensitive to them and investigate them and insult them is totally mistaken. It has nothing to do with reality. It has nothing to do with fact.

When we destroy the morale of people who have dedicated their lives to the service of others, we have destroyed something very precious indeed, and that is how they view this kind of an investigation, as destructive to their morale, as insulting to them.

Would any of us in the Senate think of intentionally insulting decent people who are trying to perform a public service? I do not think any of us would.

Yet that is how it is taken by those who are actually doing this kind of work. It is taken as an insult, it is taken as a personal attack. It does damage their morale. It does upset the parents of institutionalized persons and, indeed, institutionalized persons themselves.

I can remember during this time being told of efforts by the Justice Department personnel to try to interview inmates in State mental hospitals, untrained Federal Justice Department personnel, Justice Department people, FBI people, with no notion at all as to how to deal with the mentally ill, trying to interrogate them one on one.

Mr. President, I suggest to you that the kind of investigation commenced and then stopped in the State of Missouri because of my protest is not benign, it is not benevolent. It is most injurious to good and decent people and to effective programs. It is not a step forward to helping the retarded or the ill or the institutionalized; it is a step backward. It is destructive. It is damaging.

The second point I would like to make about this letter is as follows: The approach that we took to the Justice Department back in 1975 in the State of Missouri under the language of this conference committee report would be absolutely the wrong approach to take because we drew the line. We told them to get lost. We told them we were not going to take that any more. We told them that no, we did not want detectives moving through our institutions talking to our patients.

We did not want detectives rummaging through the medical records of patients. We believed in privacy; we believed in decency. We did not want gumshoes moving through the hallways of our State schools for the retarded. Because we insisted on our position they went away. We stopped them before the FBI got into the picture. We insisted that if they proceed further, they do so by lawsuit, not this roving squad of investigators, uncontrolled by any policing by the courts.

So they stopped.

Mr. President, under the language of this conference report, it would have had the opposite effect, because again the conference report says:

It is anticipated that the States and relevant officials will cooperate in the investigate process. If there is a failure to do so, the Attorney General may consider this factor in taking any actions under this act.

I wonder, Mr. President, given this House Bill 10, if that had been in effect when I was attorney general of Missouri, what I would have done. Because my job

as attorney general was to protect my client and my client was the division of mental health. That is what I was employed to do. That is what the taxpayers of Missouri paid me to do—to protect our State institutions, to protect those who worked within them, to protect those who were patients within them from this kind of disruption.

And the way that I sought to protect them was to draw the line and to say to the Special Litigation Division, "No, you can't do this any more." And to say to the FBI, "No, stop it. We are not going to have police officers moving through our institutions with cameras. We are not going to have the key personnel of our State institutions taking up their time filling our your questionnaires. Enough is enough."

That was my approach then. What would be my approach today if I were attorney general of Missouri with this kind of law on the books, when, unlike the criminal laws in this State, failure to cooperate is taken against you, when failure to cooperate would be an invitation to the Attorney General of the United States to really crack down, to really get tough, to really use his muscle on our State employees?

What an impossible dilemma that is for a lawyer, for an attorney general of the State. Do you cooperate or do you not cooperate? Do you go along with the investigators or do you not go along with the investigators?

In our system, Mr. President, we do not force lawyers for individual clients in criminal cases into that kind of position. We do not force them in the position of knowing that if they do not go along with the investigation, it is to their peril. We have constitutional protections against that. Most lawyers are not in that kind of situation.

But here it is like a Franz Kafka novel. You do not know how to deal with the bureaucracy. You do not know how to deal with Washington. You do not know whether to go along or not go along, to cooperate or not to cooperate, or what is best for your people and your clients and your constituents.

I do not know how to handle it. But I do know this: That nothing good will come of this kind of an approach to Federal-State relations; that nothing good will come of sending investigators into State institutions for the purpose of litigation.

Well, there is more to be told about the situation in our State of Missouri. It was sort of a little saga for a while. Letters went back and forth. One Attorney General was replaced by another. Mr. Saxbe left office. Mr. Levi came into office. I was trying to communicate with Attorney General Saxbe. He was replaced. Then I was trying to communicate with Attorney General Levi. He never answered my mail. Assistant Attorney General Pottinger was in charge of the Civil Rights Division. He wrote me letters that misrepresented my position.

I tried to line up a meeting with the Attorney General to take him on a tour of our State institutions, to try to instill in him an understanding of some of the human values that are at stake in this kind of situation. I never heard from him at all.

And I think, Mr. President, that perhaps he would have gained from the experience of visiting one of our State schools himself. Sometimes we can be isolated here in Washington. Sometimes we can be a little bit insensitive to what is going on in the rest of the country. We can assume that we have all the answers and that we are perfect, that there is something wrong with everyone else. That is why it has been said that Washington is 10 miles square, surrounded by reality on all sides.

There is the notion that the rest of the country exists for the purpose of being directed by us, instructed what to do by us, that the rest of the country is incapable of taking care of its own, that State governments and local governments are defective and evil.

So I wanted to get these two Attorneys General to come out to Missouri, see our institutions, see what is going on, and talk to the people.

Oh, no. Why, that is too much trouble. They might have to leave their office. They might have to leave Washington. We would not want that. The people who they dispatch from Washington are not the people who make decisions. They are the FBI agents.

Mr. President, what would happen if the shoe were on the other foot? Is it only State institutions and local institutions which provide dubious treatment for people who are in them? I certainly would not agree with that.

There is a State prison in Atlanta, Ga., and I am told that it is a dump. I am told that it is one of the worst prisons in this country, not one of the best.

I talked to one of the members of the congressional delegation from Georgia. He said that the Federal penitentiary in Atlanta was a disgrace. Who runs the Federal penitentiary in Atlanta? What department of the Federal Government is in charge of it? The Justice Department, the same Department that is charged in this bill with investigating State institutions. "Physician, heal thy self."

Another approach would be to truly put the shoe on the other foot: Why not allow the States to investigate Federal institutions?

Why not permit the attorney general of each State to send his highway patrol into Federal institutions to conduct investigations of several weeks? Why not allow the attorneys general of the various States to send questionnaires to the Federal institutions requiring five people in each institution, five key people, to spend 6 months filling out the questionnaires? What is wrong with that?

Mr. President, I would imagine that the case would be if a team of investigators from the State Highway Patrol in Georgia went into the Federal prison in Atlanta and started asking inmates in the penitentiary whether they were happy with their lot, whether the food was good, whether the conditions were good, that there might be some complaints, the basis of a lawsuit. And if you sent in investigators under assignment from the litigation division in the State attorney general's office with a view toward looking for the worst and making a case for litigation, there is no end to the kind of evidence that could be garnered for a lawsuit by the State of Georgia in this case against the Federal Government.

Why not put the Attorney General of the United States in the same position as the attorney general of each State under this bill?

How about my own State of Missouri? In Springfield, Mo., the Federal prison hospital is located. That is the federally run institution, a hospital, for inmates from the Federal prison system who need hospitalization. That is where they are sent, to Springfield, Mo.

I have been through that hospital. Mr. President, it is no great shakes as a hospital, I can tell you that.

We have some wonderful hospitals in our State of Missouri. The Cox Medical Center in Springfield is a wonderful hospital. It certainly is many, many times better than the Federal prison hospital in Springfield. Why not send teams of litigators and investigators from the State attorney general's office in Missouri into the Federal prison hospital in Springfield? Why do we not have a bill that funds such a program? We could authorize it and then we could subsidize it through LEAA, or some other program. They could go in there and set up a little booth in which to talk to people. They could find out what is going on. Are they happy? Are they getting adequate treatment? Are they seeing the doctor frequently enough? How are their living accommodations? How is the food?

Is that the relationship that we want between the Federal and State governments?

If the Missouri State Highway Patrol were to show up at the Springfield Federal prison hospital, stay there for weeks, and present lengthy questionnaires to be filled out by Federal employees—with a view toward what? Toward filing a lawsuit in our State courts in Missouri. Can you imagine that?

It would be a lawsuit filed by the attorney general of Missouri in the State courts against the Federal Government for failure to maintain minimum standards of treatment for people in the Federal prison hospital in Springfield, Mo.

Mr. President, that is the exact mirror image of what we are doing in this bill. Just insert the word State for Federal and the word Federal for State. What we are doing in this bill is sending litigators, investigators, and FBI agents into State institutions with a view toward filing lawsuits in Federal courts against State governments. Why should we not turn that around? Can the case be seriously made that Federal institutions are better than State institutions? Is that the point? And, therefore, the Federal institutions should get off the hook?

Mr. President, let me tell you what happened in the State of Missouri within the last year. It happened in, I believe, Platte County, Mo., where there is located a satellite of the Federal penitentiary in Leavenworth, Kans.

What happened at that institution just within the last year? It blew up. It exploded. People were killed. Inmates in that institution were blown to bits.

Mr. President, when inmates in institutions are blown to bits by explosives, does that, as a matter of law, meet the constitutional test for minimum treatment of people in State institutions?

I would suggest that it does not. I am sure that the advocates of the bill which is before the Congress could point to a number of horror stories in State institutions, and no doubt they can. There are 8,000 State and local institutions in this country. It is a simple matter to comb through 1,000 institutions and find horror stories. It is as easy as falling off a log.

Mr. President, let me tell you what we are not doing at the State level in this country. We are not blowing inmates to bits. That is a Federal specialty. So why can the attorney general of the State of Missouri not send Federal highway patrol officers into that Leavenworth Platte County satellite in Missouri with a view to preparing a case for trial? Of course, Mr. President, there is an obvious reason. The obvious reason is that we have a system of government in this country involving roles to be played by the Federal Government and by the State government. We do not assume in America that the Federal Government is better than the State government or that the State government is better than the Federal Government. They have different roles to play in our system of things, in our scheme of things. Those different roles are best furthered by cooperation, by agreement, by understanding, by mutual support.

Clearly, if the attorney general of a State were to dispatch highway patrolmen into Federal institutions, if he were to give Federal officials lengthy forms to fill out and elaborate requests for statistical information, if he were to file lawsuits in State courts—clearly, if we had such a system, it would mark the breakdown of the relationship between Federal and State governments which our Founding Fathers spent so much time trying to create. It would be an absurdity, outlandish, ridiculous, foolish for such a situation to exist.

Why, Mr. President, is it foolish only in the case of States doing it to the Federal Government? Why is it not equally foolish for the Federal Government to do it to the States? So, what are involved in this bill are some matters of very great principle.

Unfortunately, sometimes, we rush onto the floor of the Senate, we view everything in purely symbolic terms. I am sure that has been the case in this bill, as with others. And, basically, the way the case is put is, well, are you for institutionalized persons or not?

Mr. President, I ask unanimous consent that I may yield at this point to the Senator from Tennessee without losing my right to the floor. I ask unanimous consent further that any subsequent regaining of the floor by me in accordance with the same unanimous-consent agreement previously entered into, to the effect that any comments on this bill by either Senator EXON or myself today not be included in the computation of the maximum number of times we can speak on one bill in a legislative day.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Tennessee is recognized.

Mr. SASSER. Mr. President, I thank the distinguished Senator from Missouri for yielding to me without losing his right to the floor, to make a statement that I think is of considerable urgency to the country.

THE FEDERAL RESERVE BOARD AND THE SILVER SPECULATORS

Mr. SASSER. Mr. President, the Washington Post has reported that Chairman Paul Volcker of the Federal Reserve Board has engaged in negotiations that appear to have been secret, resulting in an arrangement with some of the Nation's largest banks to help bail out some of the speculators whose actions led to the collapse of the silver market.

If these reports are correct, the Fed seems willing to offer help and assistance totaling $800 million to the Hunt financial empire. while providing minimal assistance to the Nation's small businesses, including homebuilders and farmers. The Federal Reserve Board seems to be taking a position that billionaires and speculators who knowingly took a risk, and lost deserve consideration, while denying substantial and necessary relief to small businessmen who constitute the seedbed of our free enterprise system.

The Federal Reserve Board did announce last week some assistance to farmers and small businessmen, but the $3 billion for millions of farmers and small businessmen will not go far. The meager sums provided to these most important sectors of the economy will not prevent tens of thousands of bankruptcies, and it will not stop the tide of economic ruin for millions of Americans.

The favorable credit approved for the Hunt brothers of Dallas will prevent their economic ruin. It will keep them afloat and prevent their bankruptcy.

Again, the Federal Reserve Board has demonstrated its myopic perception of the Nation's problems. It appears that Chairman Volcker and his colleagues on the Fed are more concerned with the economic vitality of billionaires than with the economic security of most Americans.

An $800 million bailout for one family—a family that owns more assets than hundreds of thousands, indeed millions, of Americans, put together—is indeed a strange episode in the economic tragedy developing from the policies of the Federal Reserve Board.

Last week the Fed made a big splash out of providing credit for farmers and small businessmen, but that credit is meaningless at the interest rates that still must be paid. The Fed's so-called "favorable terms" for small business amount to effectively reducing the interest rate on a small sum to be loaned to farmers for planting by only 3 or 4 percent. The farmers will still be paying 16–17 percent interest, more than twice the interest rate of the last planting season.

The farmers are in trouble, Mr. President, and we are all going to suffer if they cannot plant their crops. We shall have a food shortage next year and consumers will end up paying more for their daily groceries. This of course, will only lead to more inflation. But farmers and consumers do not command the attention of the big bankers and the Federal Reserve officials that the speculators can command. The farmers just do not travel in the same circles as the economic elite that seems to appeal to the Chairman of the Federal Reserve Board.

Mr. President, there may have been a good reason to attempt to cushion the effect of the silver collapse, but the question I am asking is a bailout sanctioned by the Chairman of the Federal Reserve Board the best way to do it? Should such financial negotiations be carried out in apparent secrecy behind the scenes and reported surreptitiously 2 or 3 weeks after the fact? Is that the answer? Is that the way we do the people's business in this country?

I think not. There should have been a full public discussion of this matter, including all the members of the Federal Reserve Board, and the Congress should at least have been advised of what was going on.

Again, I call on the Federal Reserve Board to take immediate steps to reduce the exhorbitant interest rates that are punishing the American farmer, the American homebuilder, and the small businessmen of this country. The Federal Reserve, with the bail-out of the silver speculators, has demonstrated a willingness to respond to what they perceive to be a threat to the stability of the national economy. But I submit that the greater threat to our ecoonmic future lies in the high interest rate policies which are causing an economic slump. This could conceivably reach depression proportions for millions of Americans who will lose their farms, lose their businesses, lose their jobs, or lose their possessions.

Mr. President, as my colleagues might be able to determine by my demeanor, I have simply lost my patience with Mr. Volcker and his colleagues on the Federal Reserve Board.

I am tired of the insensitivity of the Federal Reserve Board officials. I am tired of the obvious big business bias of the Federal Reserve Board. I am tired of seeing my constituents suffer at the hands of Federal Reserve Board officials who are committed to outmoded policies that are counterproductive and shortsighted, and are, in and of themselves, inflationary.

Mr. President, I am deeply disturbed by Chairman Volcker's and Comptroller Heimann's actions in approving this massive loan to the Hunt family while millions of more deserving American businessmen are being crucified by high interest rates.

Consequently, I have written Chairman Volcker for a full explanation of his actions in this matter and I ask unanimous consent that this letter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
Washington, D.C., April 24, 1980.

Chairman PAUL A. VOLCKER,
The Board of Governors of the Federal Reserve System, Washington, D.C.

DEAR CHAIRMAN VOLCKER: It has recently been reported that with your personal concurrence, loans totaling over $800 million have and will be made to the Hunt family to allow them to cushion their financial losses in their recent speculative effort to corner the silver market.

I am most disturbed by the fact that the nation's financial community has seen fit to extend the Hunt family this staggering amount of credit while daily farmers, homebuilders, and small businessmen are going out of business because of high interest rates.

I would appreciate a full and complete report on the events that led up to your approval of this extension of credit to the Hunt family together with an explanation of the authority on which you relied to approve these loan commitments to the Hunt family.

Finally, I would appreciate your explanation of why this commitment occurred in light of the Federal Reserve Board admonition of March 14 to member banks to stop making loans to speculative business ventures.

This nation is in an unparalleled credit squeeze, and I think that all those that are being denied credit deserve a full explanation of this most unusual action in approving this massive loan to the Hunt family.

I await your immediate response to this inquiry.

With best regards, I am
Sincerely,

JIM SASSER,
Chairman, Subcommittee on Intergovernmental Relations.

Mr. SASSER. Mr President, high interest rates are retarding the economic growth of this country.

Obviously wild speculators should not be rewarded with tender, loving financial care while the Fed tosses a few dregs of relief to small businessmen and women struggling to keep alive.

CIVIL RIGHTS OF INSTITUTIONALIZED PERSONS—CONFERENCE REPORT

The Senate continued with the consideration of the conference report.

Mr. DANFORTH. Mr. President, I ask unanimous consent that Senator BOREN may at this time claim the floor, that any remarks made by him at this time may not count in computing the maximum number of times he can speak on one subject in one legislative day.

The PRESIDING OFFICER (Mr. BRADLEY.) Is there objection?

Without objection, it is so ordered.

Mr. BOREN. Mr. President, I further ask unanimous consent that any remarks I make on this calendar day on the pending legislation, H.R. 10, not count in computing the two speeches allowed on the same legislative day on the same subject.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BOREN. Mr. President, I thank my distinguished colleague from Missouri for yielding to me, and I thank him for the excellent remarks which he made earlier on the floor of the Senate.

His analysis of the pending legislation contains great insight. I am proud to join him in opposing the adoption of the conference committee report on H.R. 10.

Mr. President, I could hardly have suspected earlier this year when the Senate considered and adopted H.R. 10 that it would be possible for the conference committee to return a bill to the Senate floor in worse condition than the one which originally was before us. But such is the case with this conference committee report.

I feel compelled at the outset to point out again, as I did during the debate last February, that my opposition to this measure is not an endorsement in any form of the often horrible abuses of the civil rights of institutionalized persons across this country which have unfortunately and most regrettably, occurred.

I take this position certainly without intending any disrespect to my good friend and colleague, the Senator from Indiana. In fact, I salute his efforts in bringing to the attention of the country the nature of these abuses, and I salute him for his efforts to try to protect the rights of institutionalized persons.

Mr. BAYH. Will the Senator yield, without losing his right to the floor, et cetera, et cetera, et cetera?

Mr. BOREN. I am most happy to yield under those conditions to my good friend.

Mr. BAYH. Mr. President, I appreciate the thoughts and words of the Senator from Oklahoma.

Although I have a sneaking suspicion that he will not concur, I would like to point out that the abuses that he, as a former chief executive of his State, is understandably concerned about, will continue unabated unless this legislation is passed.

That abuse, which I think is intolerable and which we went to a great extent to try to prohibit in the legislation before us, is the concern of the Justice Department, to operate as they feel they have a right to do under the Constitution.

What this bill does, I say to the Senator, is to limit their ability in intervention. At the same time, they have the right to initiate.

So it seems to the Senator from Indiana that what we are doing is establishing a much higher standard before the Federal Government could get involved, and to try to keep the distinguished Governors of our States, the Borens and the Exons, and the others who have represented their States as Governors and attorney generals, and are now colleagues, and those who do not have that opportunity, from having to go through the kind of unacceptable abuse which has been pointed out here.

I thank my colleague for yielding. As I said earlier, I have a sort of nagging doubt that he might not be persuaded by the good faith of the Senator from Indiana; nevertheless, the good faith is there.

Mr. BOREN. I thank the Senator from Indiana. As usual, he has demonstrated great foresight in stating that he has doubt that I will agree with him as to a solution, because his doubt is well placed.

I do not dispute for an instant the existence of the abuses that my colleague has pointed out, which have been pointed out before.

I join my good friend Senator BAYH and all other Senators in abhoring the existence of those abuses and in dedicating my efforts to seeing that they are eradicated. However, to try to achieve that goal by allowing the Federal Government—and in particular the Justice Department—to interfere in the rights of the various States is entirely the wrong manner in which to proceed.

Rarely have I viewed a piece of legislation which is so well-intentioned in its goals but which is so mistaken in the means it adopts.

I think it would be very instructive for the Senate and for the country to engage in a very thorough discussion of what this bill intends to do.

The people of this country should know that the Senate of the United States is proposing to inaugurate the Attorney General of the United States as a supreme authority—a supreme authority—over State and county institutions, over the wardens and superintendents and directors of those institutions, over the corrections boards, over the county commissioners of this country, the city councils and the mayors of America, over the State legislatures, and even over the Governors of the sovereign States—will stand the Attorney General of the United States. I cannot believe that such was the intent of any framer of the U.S. Constitution.

Because I understand that the conference committee report has yet to be printed and fully distributed, I believe it is most important for my colleagues to be fully aware of what that report says and of the explanatory statements made by the Committee of Conference. It is therefore my intent to go over that report and statement in finite detail to make sure that all within the sound of my voice fully understands the intent of the legislation and the havoc I believe it will create in our federalist system.

Mr. President, even in the introduction to the report, there is cause for alarm. The report begins by saying:

> One measure of a nation's civilization is the quality of treatment it provides persons entrusted to its care. The past decade has borne testimony to the growing civilization of this country through its commitment to the adequate care of its institutionalized citizens. Nowhere is that commitment more evident than in the actions of the U.S. Justice Department.

Certainly, I would not quarrel with the sentiment that a significant nature of a Nation's civilization is the treatment it affords to those entrusted to its care. Nor would I quarrel that the United States leads the world in its commitment to such care.

I do question highly that the actions of the U.S. Justice Department should be held as a shining beacon to which all who share such concerns should gather.

For example, it has been the U.S. Department of Justice that has been re-

sponsible for overseeing conditions in the Federal correctional system in this country. It is certainly worthy of close examination how they have discharged that responsibility, for it is just such additional responsibility H.R. 10 proposes to give the Justice Department in relation to State and local institutions.

For the purposes of such an examination, I intend to return later, and will quote extensively—perhaps even verbatim—from a staff study of the U.S. penitentiary in Atlanta, Ga. A study conducted by the permanent Subcommittee on Investigations of the Committee on Governmental Affairs of the U.S. Senate, which was chaired by the distinguished and able senator from Georgia, Senator SAM NUNN.

But for now, let us go on with our examination of the explanatory statement of the current conference committee report.

The report goes on in its introductory phase to read like a press release from the Justice Department itself:

Since 1971, the Attorney General has participated in a series of civil actions seeking to redress widespread violations of constitutional and federal statutory rights of persons residing in state institutions. Through litigation conducted by the Civil Rights Division, the Justice Department has participated as *amicus curiae* or plaintiff-intervenor in more than 25 suits brought to secure decent and humane conditions in institutions housing the mentally ill, the retarded, the chronically physically ill, prisoners, juvenile delinquents, and neglected children. In addition, the Attorney General has participated in suits successfully challenging the constitutionality of several State commitment statutes.

At least ten Federal district courts have requested the Justice Department to participate in litigation concerning the rights of institutionalized individuals. The Attorney General has also petitioned to intervene in pending cases, to represent the interests of the United States in securing basic constitutional rights for its institutionalized citizens.

Mr. LONG. Mr. President, will the Senator yield at that point?

Mr. BOREN. I will be happy to yield to the Senator, without losing my right to the floor.

Mr. LONG. I ask the Senator this question: Do I correctly understand that the principal difference between the existing law and that which is proposed in this bill is that under existing law, for the Federal Government to become involved in suing a State, they have to get somebody to complain?

Mr. BOREN. That is exactly right.

The Federal Government already has a right to intervene. If you have a group of inmates in the penitentiary who file a lawsuit—as I have had the experience in my own State—the Federal Government can come in with all the weight of the Justice Department, all the resources of the Federal Government on the side of those who file the suit.

Under this bill, if passed, the Federal Government could go around with its own team of investigators, roving throughout the country, looking into every matter of local affairs, and decide on its own initiative. Even if every inmate of the institution were satisfied, they could, on their own initiative, file such suits against units of State government and local government.

Mr. LONG. I ask this question of the Senator: Under existing law, would the Attorney General or any of his subordinates—he has thousands of them—have the right to prepare a petition and everything, so that all the person would have to do would be to sign his name to it, and then they could file the lawsuit for him, if he wanted to have such a lawsuit filed?

Mr. BOREN. The Senator is absolutely correct.

Under existing law the Department of Justice and the Attorney General could provide any such service to an inmate. So it would boil down to the fact that they would have to find at least one person in the institution who, at the urging of the Justice Department, would be willing to bring the suit in his name.

Mr. LONG. The need for this law, if there is one, would have to be a need to sue the States even though nobody in the State is interested in suing the State.

Mr. BOREN. I think that is exactly right. The Senator from Louisiana is correct. It would mean they could not find one, single, solitary dissatisfied person in an institution, to the point that they would have to bring the suit themselves.

Mr. LONG. Mr. President, will the Senator yield for another question?

Mr. BOREN. I am happy to yield.

Mr. LONG. Is the Senator of the opinion, as some of us are of the opinion, that the people today feel that the Federal Government is wasting their money by engaging in all sorts of things that are nothing but an irritation and a violation of the rights of people to run their own affairs and to run their own government at a State and local level?

Mr. BOREN. The Senator is correct. He has expressed the frustration I have found up and down the length of my own State and other States I have had the privilege of visiting.

In other words, what they are saying here is that people at the local level, elected officials, chosen by the people of their States, who are close to the local problems, have no sense or no judgment about what should be done in their own institutions, in their States; that somebody sitting in Washington, who has not been to those States and has not been to those institutions has better sense about setting the budget priorities and what the real needs are than the people themselves.

Mr. LONG. May I ask the Senator a further question?

Mr. BOREN. Certainly.

Mr. LONG. Does this seem to be somewhat in line with the great wisdom that was demonstrated in this body when someone came forth with legislation to pay people to sue us, in other words, to pay people to sue the Federal Government?

I ask the Senator further: Other than the Federal Government itself, can the Senator name me anyone who is not a complete idiot who has ever hired a lawyer to sue himself?

Mr. BOREN. I would have to tell the Senator that I believe that the Federal Government is the only individual institution on the face of this Earth that I have known of that has ever done that.

Mr. LONG. Will the Senator yield for another question?

Mr. BOREN. I am happy to yield.

Mr. LONG. Is the Senator aware of the various provisions in various laws where we pay people to represent people indigent and people who otherwise could not afford to hire a lawyer even though the judge would appoint one to defend them?

Mr. BOREN. Yes, I am certainly aware of that.

Mr. LONG. Is the Senator aware of the fact that these lawyers, very generously paid by the government to represent criminals, are also paid to just appeal, appeal, and appeal, and drag the case out ad infinitum at great expense to all levels of government, the State courts, the law enforcement officials, the police on the beat, and everyone else?

Mr. BOREN. The Senator is correct, and I am certainly aware of that.

Mr. LONG. Mr. President, will the Senator yield for a further question?

Mr. BOREN. I am happy to yield.

Mr. LONG. Did it ever occur to the Senator that before we just spend untold thousands of dollars trying a case over and over again, appealing, looking for technicalities to keep the thing going, getting writs of habeas corpus, just keeping the thing going on and on forever, it might be a good idea at least to add, since the man was convicted, will someone take a look to see if he thought the guy was guilty? If he is guilty, quit wasting Federal Government money dragging the thing out on and on forever through the courts.

Mr. BOREN. I could not agree with the Senator more. I say that the vast overwhelming majority of the citizens of this country would feel the same way.

When we think about the funds that are expended in this way, when we think about the funds that would be expended under this bill funding not only the salaries of the lawyers who are going to be intervening and the people who are going around trying to stir up this litigation, but a whole horde of investigators who are going to be coming down on the State and looking into every local jail and into every institution, when we think about the fact that we know that money could be spent by the Federal Government itself maybe in cleaning up some of its own institutions, and perhaps they should set their own house in order before they go around looking at what the States and local units of government are doing, it certainly seems like a misplaced priority to me.

Mr. LONG. Will the Senator yield for a further question?

Mr. BOREN. I am happy to yield.

Mr. LONG. Is the Senator aware of the fact that some of us are being urged and pressed by the Budget Committee to make drastic reductions in expenditures for various functions of Government today? Is the Senator aware of the fact that the budget resolution is calling upon those of us on the Finance Committee to cut back drastically in social welfare programs, even including welfare or social security benefits for people who need those benefits?

Mr. BOREN. I am certainly aware of that.

I think again this shows the mistaken priority of this bill. It is obviously going to cost money to finance this program. It is going to cost a lot of money because if they are really going to do any good, at least if they are going to carry out the aims of the authors of this bill, they are going to have to have some investigators and they are going to have to send them out. If they do not have any investigators why have the bill? They are going to have to hire some more lawyers.

They are saying there is an unmet need here. That implies they are going to have a lot more litigation. That takes a lot more lawyers and it takes the more expensive lawyer, as the Senator already pointed out, when he says that it should be a higher priority or a higher bunch of investigators and a roving team to go out across the country, hordes of them and more lawyers in the Justice Department to go into institutions that one has not even complained about, where there has not even been a lawsuit filed by a single individual inmate, as the Senator has already pointed out to go in and initiate these suits by the Federal Government itself under the guise the Federal Government knows better for the people than they know for themselves.

And they say that is a higher priority, that we should be putting money into that while we cut back on the social security checks of individuals, like a little lady I visited with recently who is trying to live on somewhere around $140 a month. She is in her 80's and has no family members to take care of her, no one but herself to depend on. She is trying to buy the medication, pay the rent, keep a roof over her head, and buy clothes and groceries. As the Senator says, in these times, in which we are cutting back on things like that, when we are leaving honest law-abiding citizens who worked all of their lives and have no one to care for them, we should not go out and spend money to create an entire new Federal bureaucracy to declare war on the States.

Mr. BAYH. Mr. President, will the Senator yield?

Mr. BOREN. I am happy to yield.

Mr. BAYH. Maybe we could just save a lot of money if we repealed the whole Constitution of the United States so when we have people subject to cruel and unusual punishment, they do not have any remedy.

I get a little tired, I say to my friend, when he talks about that 80-year-old widow that is going to be denied her social security. I wish he could have talked to the old folks who talked to me in northern Indiana who were glad to hear this because of the kind of treatment they were getting in old folks' home.

We are not talking about a social welfare program, I say to both of my friends. We are talking about egregious, wanton, willful abuse of the constitutional rights of people.

Mr. BOREN. I certainly think the Senator from Indiana knows that neither the Senator from Louisiana nor the Senator from Oklahoma is talking about repealing the Constitution or the constitutional rights of individuals. Nor are we.

Mr. BAYH. That is what I heard, I say to my friend.

Mr. BOREN. I think the Senator is misreading what he is hearing. I think again there is a misunderstanding here of the goal and understanding of the practical impact of what the Senator is talking about.

I could go back again to my own experience in Oklahoma and I can cite chapter and verse because it actually happened. I can tell the Senator, for example——

Mr. BAYH. May I just ask a question? And I wish to hear this again because I have heard it and want the Senator from Louisiana to hear it again. This is happening under the present law, is it not?

Mr. BOREN. It is happening under the present law. There are abuses already under the present law because the Federal Government I think has gone ahead and intervened in cases where it should not have intervened.

Mr. BAYH. Without any notice, without trying to cooperate, without trying to resolve it in a spirit of cooperation?

Mr. BOREN. I say in many cases there has been an absence of that. All we are trying to do under this bill, if we have problems now, is compound these problems many times over by saying we are going to let the Federal Government initiate the suits; we are not even going to wait until someone files a lawsuit at the local level, that an inmate of an institution or person who has been institutionalized is not acting himself or herself. We are going to have the Federal Government come in and do it.

I can tell the Senator, for example, exactly what happened in our State. I think sometimes people at the Federal level forget that the States operate with balanced budgets.

It has been so long since we operated with balanced budgets at the Federal level that people forget there are units of government, thank goodness, that do operate within the requirements that they have of balanced budgets.

So when they spend more money for one function than they should that means they must spend less money for another function of government.

I can remember very well when we were under a Federal court order on the prison system in Oklahoma. I can remember the State director of mental health, Dr. Hayden Donohue, who is also superintendent of the State's largest mental hospital, coming into my office and saying, "Governor, we have a terrible situation in the mental hospital. We have an old steam plant that is operating there that has been there really virtually since statehood, since around 1907 when those institutions were first built. It is not working. The heat is uneven. Steam pours out. It is very unhealthy for these people who are in our institution."

I remember him pleading with me for the money to do something about that. I remember and I felt terrible to have to say to him: "I am sorry, Doc, we are going to have to wait another year. We have to go and put priority on the corrections budget. We have to go ahead and work on a new water system in one of our penal institutions because we are under Federal court order on that."

We are not under Federal court order on our mental institutions so they get shorted. I know the Senator from Indiana is sincere. I know he has talked about institutionalized people being mistreated, and I agree with him wholeheartedly that it should be stopped. I know that he has particularly been concerned about the mentally retarded and about those who are not capable of takng care of themselves.

But I can tell you as a practical result of coming under orders for one program in your State, you then take away money from other programs in your State, whether it be special education, care for juvenile facilities, halfway houses, for example, for juveniles, the program in which I believed, institutions for those who are mentally ill, and all the rest of them. When you have only so many dollars to deal with, when you come under orders, "You will do this and take certain action," one element of your budget, you set budgetary priorities across the board.

I can tell you, I think, dealing from the point of view of humanity—and I went into every one of those institutions myself and I knew which ones of them were firetraps and which were not—talking about all of our institutions, we provided for persons across the board; I think I had just as good an idea as somebody in the Department of Justice about what ought to be done. I daresay that as Governor of our State I spent more sleepless nights worrying about those people than some bureaucrats at the Department of Justice.

I daresay a lot of the members of our State legislature have the same humane concern. I think this bill is nothing but an expression of the feeling that there is nobody who cares about people in this country except the all-wise Federal bureaucracy; that somehow when people are elected at the local level by the local people as mayors, members of the city council, and members of the State legislature, that they lose all human compassion and all sense of reason, and they know nothing about their local budget and how to do the necessary job, but only that we in the U.S. Senate have more wisdom as to how to take care of institutionalized people and spending dollars than those local officials who are elected by the families of the people in those institutions.

Mr. LONG. Mr. President, will the Senator yield?

Mr. BOREN. I would be happy to yield.

Mr. LONG. Is it not true that there are people in some institutions who are there against their will, and that is necessarily the case?

Mr. BOREN. That is correct.

Mr. LONG. In other words, is it not true that there are some people in the penitentiary who would prefer not to be in the penitentiary?

Mr. BOREN. I would daresay that, without taking any great risk in answering, the vast majority of them might be in that category.

Mr. LONG. Is it not also true that

there are some people in some of these other asylums who would prefer not to be there? As a matter of fact, is it not true that, as my Uncle Earl used to say, if you turned those people inside asylums out, half of them are going to lock some of us up? [Laughter.]

But is it not so that, generally speaking, the average person, a great number of people in some of these cases do not think they ought to be there, that, in fact, somebody else ought to be there, if anybody at all?

Mr. BOREN. That is absolutely true. Even in our penal institutions I have rarely interviewed an inmate or talked to one who told me he deserved to be there.

Mr. LONG. But is it not also true that most of those people have relatives, they have loved ones, who care about them, who go visit them from time to time to check on their condition and see if they can do something to help make their stay more comfortable, to bring them some little things that otherwise they might not have, and to see that they are being treated well, and that those people on behalf of their relatives have the right to sue if they want to do so?

Mr. BOREN. The Senator is correct.

Mr. LONG. Well now, does not also the Attorney General have the right to represent all those curators and all those agents who speak for their relatives as well as the inmates themselves?

Mr. BOREN. That is correct.

Mr. LONG. So is it not true that what we are talking about here is the Federal Government going in here and suing where there is nobody complaining, nobody filing a lawsuit, nobody asking to be sued, no person who is not mentally competent to have a lawsuit filed on his behalf?

Mr. BOREN. The Senator is right.

I could have a lot more sympathy for this bill if it had been merely phrased to take care of a particular problem. Let us suppose this bill had said that there are some people who, because of age or mental competency or because added to this they have no family members or have no next of kin, in other words, there are situations where they themselves are not competent to take care of themselves, and there is no one near to them competent, that the Federal Government then, perhaps, could intervene on their behalf or could initiate it on their behalf then. In that case, I would say yes. The Senator from Oklahoma could support that kind of legislation.

But it does not say that. For example, under all of our court orders we have assured that inmates of our penal institutions will have access to legal libraries, to legal materials.

Inmates of our penal institutions, many of them have become so adept at filing lawsuits for themselves that we have even invented a phrase for them. I think it appears in the dictionary. We refer to them as "jailhouse lawyers." It is a well-known phrase and one that is often used and, in fact, some of the most knowledgeable people in terms of the legal rights of those who have been accused of violations of the criminal law are inmates of the institutions themselves, who spent hours and hours studying their own cases and writing their own appeals and making motions on their own behalf.

I know, again from my experience as Governor of a State, that there certainly is no inability on the part of inmates of penal institutions, for example, to bring lawsuits. I would dare say in my official capacity I probably was sued a thousand times by inmates of penal institutions. So there certainly is nothing which keeps inmates in these institutions from bringing suits.

If we are concerned about those people who might somehow fall through the cracks, those people who do not know how to bring a suit themselves or are not capable of complaining themselves, if we are talking about those people who are very young, talking about children in our institutions for children, who are somehow left without guardians to look after them except the institutions themselves, if we are talking about people who are not mentally competent, if for reasons of mental illness or mental incapacity they are simply unable to even focus upon the nature of their own treatment or the possible remedies that are available to them, I would say yes, yes, let the Federal Government initiate suits for them. But that is not what we are talking about.

I go back to the very fact—and I realize the Senator from Indiana is well intentioned; I realize those of my colleagues who put their names on this piece of legislation really and truly care about institutionalized persons, they really and truly care about the treatment they are getting.

I can only say that those of us who are opposing this piece of legislation also have deep concern for these people. We care about them. I can tell you that at one point in time when we were considering a corrections bill in our State legislature, and we badly needed to construct more facilities because our existing facilities were so overcrowded, conditions were deplorable, that I used every, every possible authority of the Governor's office to get legislation passed to do something about it. At one point in time—and this was allowable under rules—the rollcall on an appropriations bill was even held open for 2 hours so that an airplane could be dispatched to bring in the deciding vote to get the votes to build the penal facilities, so that we could modernize and update our system.

I can tell you that I cared; that as much as anything else I did during my term as Governor I spent what time and influence I had working to improve conditions in our institutions, in our correctional institutions, in our institutions of mental health, in our institutions providing social services to juveniles, and all the rest of it.

But I can tell you that I also think from that experience that people at the State and local level are in a much better position to judge the priorities, to decide how their dollars are going to be spent.

I just go back to this: If you leave it up to the Federal Government to rush around initiating suits on their own, as this bill would let them do, you, in essence, let the Federal Government set the budgetary priorities for the States. You let them decide. You let the Federal Government—and when I use the phrase "Federal Government," I really mean the Federal bureaucracy, not elected by anybody, not ultimately accountable to anybody, but certainly you are placing this power in the hands of the Federal bureaucrats who are really not familiar with the local situation.

Let us say they are sitting here in Washington, in the Justice Department or, perhaps, in additional buildings we will have to rent to house all of these additional Federal employees we are going to have to hire to send out on these investigating teams, they are sitting there deciding, "Well, where shall we go investigate this week, and what State shall we go and roam around in, looking until we find something that displeases us?" And away they go. They say: Let us go to State x. Shall we look at the juvenile detention facilities first or should we look at the State prisons first or should we look at the institution for the mentally retarded first?"

And on a whim they decide where they are going to go first. So they go into one of those institutions, and they find something there that displeases them. Let us suppose they go into the State prison first, as is the case in my own eyperience, where the State prison was the first major institution of the State government that drew the attention of those who were complaining about the treatment of institutionalized persons.

So purely by chance or by whim, perhaps following the interests of the team of investigators, perhaps members of that team maybe had degrees in penology, they were more interested in that than they were in the care of the mentally retarded, let us say, they go into the State prison.

So they go into the State prisons. They go there first. They find things that do not please them. They convince the Attorney General that he ought to file a suit against this State.

They then go into Federal court and, over a period of time and through a process of litigation, they obtain orders that the State, this particular State, will spend x amount of dollars to correct certain conditions. As is often the case, these orders are not general in nature. They are very specific. They get down to saying that you will get this many new cell spaces that have this many square feet.

They also get so specific as to say that you will install these new water towers on this location and you will install a pipe of a certain diameter made of a certain product that will connect up these water towers with the areas to be served. They get very specific.

You will find $7,823 on this purpose and $217,876.22 on this purpose. I have read those orders. I have experienced them. I have tried to live with them on a daily basis.

So the State government has no choice but to comply. The legislature goes through the motions of the appropriations process without any real input as

to what is being said. Without the elected representatives of the people really deciding if that is where the money should be spent, they have to spend it there. Because the Federal Government, urged on by the Justice Department, has ordered them to spend it for that particular purpose. So the funds get spent there.

As I was saying a moment ago, because they get spent there, since the States have to operate with balanced budgets in most cases, and most cities operate with constrained financial limits, and most counties have to operate within certain fiscal contraints, less money gets spent somewhere else—at the mental hospitals, or that halfway house is not opened for juvenile offenders, or that community treatment program is not opened, or the dormitory for the mentally retarded children is not renovated and repaired this year.

So, because of the whim of that group of investigators from the Justice Department, priority is set in that State budget, not based upon any real understanding of what is going on in the State, not based upon any real competing understanding of other needs for those dollars—perhaps very legitimate needs—because they do not have to worry about coming up with the money. All they have to do is write the orders and tell the State governments: "You will spend x dollars on this certain purpose."

They do not have to worry, as I did, about telling the director of State mental health, because we were going to change the water system in one of our penal institutions, that we could not have a new heating system for the mental hospital. They do not have to worry, as I had to worry as an elected official, viewing other needs of the State. They do not have to worry about saying we are going to have a hundred fewer special education classes this year for children who need it because we are going to spend that money on the water system at the prison.

I could go on about the practical effects—the practical effects—which this kind of legislation could have.

I would ask, Mr. President, who is in a better position to make those decisions? The court, the Justice Department in Washington, concerned with only one narrow facet, only one element in the services provided by State and local governments to their citizens? Are they in the best position to set the budgetary priorities of the States when they do not even hold hearings or listen to evidence about other needs?

When the Justice Department or the Federal court says that you will spend x amount of dollars on the prisons, they do not even take evidence. Check the court records. You will not find anywhere where they took evidence about the educational needs of a State, mental health needs of the State, or other needs for State services. They do not do that. They do not weigh that.

Now, who is better equipped than the legislative bodies elected by people at the local level, city councils, State legislators, mayors, Governors; the people who go around holding hearings so that all of the needs of the State, all of the needs of the people; the people in the mental institutions; the people in the juvenile institutions; the people in the prisons? All these competing needs can be weighed against each other. And then, on the basis of weighing those needs and determining which are the most pressing, the elected representatives of the people at the local level set the priorities of the budget.

Or do you think that we ought to have great confidence in some bureaucrat at the Department of Justice to set the budgetary priorities for the local level and the State levels instead?

Do you think that you are more likely to get the right kind of balanced concern for all the people of your State from people elected by members of families of those who are in the institutions? Or do you think you are going to get more concern from unelected bureaucrats in the Department of Justice in Washington, who do not have to have any concern about how you pay the bills and whose pockets you may be robbing from in one area of State government to pay the bill in another?

No, Mr. President, I have to say—as the Senator from Indiana said earlier in guessing what my position would be—that I am not convinced that this is the proper method. I can only say to him that, as a practical matter, he will live to see the day when there are going to be some people he is vitally concerned about protecting who are going to have fewer dollars spent on them, fewer dollars spent on their institutions, because of the passage of this bill. That would be the case now.

When this bill was earlier before the Senate, I tried to amend it. I said:

> Let's take out the prisons, at least, so that we will not have the situation where a prison order comes first and we end up robbing the mental health budget and education budget of the State to pay for the prisons.

I said:

> At least, let's take that out.

But it was not done.

I said here today, let us limit this bill only to those cases where, for reason of age or mental competency, people are not capable of filing suit themselves. Why include in it inmates in prisons who are perfectly capable—and do every day of the week—of filing suits in their own behalf?

There are many other things that could be said about this legislation, about its unfairness. Because of its lack of specific notice to the State governments as to the conditions that need to be corrected, notice can be given on one subject, an investigation commenced on something else ends up being investigated instead, and court orders are sought on other subject matters for which notice has not even been given.

I could talk—and I hope I will have the opportunity in future days to talk—about the unfairness of this legislation in terms of the failure to keep in it an amendment offered by the Senator from Nebraska, adopted on the floor of the Senate, which would at least require that the different agencies of the Federal Government coordinate their instructions to the States, so that you do not have one Federal agency demanding you take one course of action and another Federal agency demanding that you do just the opposite.

I recall the Senator from Nebraska at that time pointing out that they were being ordered by the Justice Department and by some Federal agencies to do one thing and by HEW to do just the opposite.

It seems to me, if we are going to set up the Federal Government as czars over the State, we should at least require that the Federal Government speak with one voice to the State; at least speak consistently so that they can comply with the orders that are being sent down from all high in Washington. Even that amendment, a very mild amendment, an amendment just based on fairness that at least would put the local officials in a position to comply, taken out by the conference committee.

So I must say that this bill is a naked incursion into the rights of States. It is based upon the faulty premise that State governments and local governments have no concern, or very little concern, about the rights of institutionalized persons in their jurisdictions. It is going to end up hurting many of the very people in these institutions that the authors of this legislation are aiming—I think sincerely aiming—to protect.

Mr. President, I would urge the Members of the Senate to listen to those who have had experience with State and local governments; to listen to those who have wrestled with the budgets; to listen to those who have tried to make the dollars go as far as they possibly can; to listen to those people who stayed awake at night worrying about where within the State budget they could find additional dollars to remodel some institution that might be a firetrap or change the heating system so people in mental hospitals will not get cold and get sick. I wish they would listen to them.

It is no coincidence that nine former Governors, who are now Members of this Senate, representing all geographical parts of this country, all positions on the political spectrum from what we call liberal to conservative, members of both parties, Republicans and Democrats alike, nine former Governors who are now Senators, elected by their own people, as a result of their own experience have sent telegrams to all the Governors in this country urging them to contact Members of the Senate and express their opposition.

It is no coincidence that two of our colleagues, Senator MORGAN, of North Carolina, and Senator DANFORTH, of Missouri, both of whom have served as the attorneys general in their own States, have joined in this effort and have sent telegrams to chief law enforcement officers and prosecutors in their States urging them to become active in the defeat of this legislation. These are honorable people concerned about the citizens in their States who, from their experience, are saying that this piece of legislation should be defeated.

I hope every one of my colleagues will pause to consider why it is that these fine

Members of the Senate would be taking this position.

Mr. HELMS. Will the Senator yield?

Mr. MORGAN. I am happy to yield to my colleague from North Carolina.

Mr. HELMS. I thank the distinguished Senator from Oklahoma for his fine assessment of this legislation. I will say to him, for a very long time I have been somewhat less than impressed with the way the Federal bureaucracy operates in terms of investigating matters across the country, in terms of the pressures applied, in terms of the inordinate amount of money spent on such foolishness.

I wonder if the Senator from Oklahoma saw an item I read the other day that OSHA has finally gotten around to having an inspection of the OSHA headquarters here. Did the Senator see that item in the paper?

Mr. BOREN. I did indeed see that.

Mr. HELMS. OSHA was in violation, as I recall, of 200 of its own regulations.

We have to stop this centralization of power in Washington, D.C. All wisdom does not reside here. I have just about decided that no wisdom resides here when I see some of the judgments being made. But at this point in the history of this country, with the future of America being as fragile as it is in terms of our very survival, to continue to pile on additional authority to investigate, to persecute, to interfere, to meddle the rightful prerogatives of the States seems to me what the lawyers call reductio ad absurdum.

I commend the Senator for his eloquent assessment of this situation. I hope he stands firm. I know that he will.

I was sitting here thinking while the Senator was peaking. Maybe we ought to put the shoe on the other foot.

Not long ago I was in one of the cities of North Carolina and I went into the post office. One of the employees of the post office laughingly said, "Senator, I want you to take care of a little item for me. This building is infested with cockroaches."

Well, it occurred to me while I was sitting here listening to the distinguished Senator from Oklahoma that maybe we ought to send a swarm of State investigators into that post office and see how they like that.

I think the Federal bureaucracy, including the Justice Department, has a full plate of responsibility as it is, and instead of adding to the authorities and the responsibilities of the Federal Government we ought to hasten to diminish those authorities and those responsibilities, going back toward State rights. I commend the Senator and I thank him for yielding.

(Mr. METZENBAUM assumed the chair.)

Mr. BOREN. I thank my colleague from North Carolina. I agree completely with what he has said.

I was saying earlier that some of the most shocking reports concerning penal institutions have been written about Federal correctional institutions.

Mr. HELMS. Exactly.

Mr. BOREN. The outstanding work done by Senator NUNN, of Georgia, with reference to the Atlanta Penitentiary, said that it should really be closed. We heard what was said about drugs being used there on a widespread basis, about knife-wielding inmates, that the safety of all those in the institution was very much in doubt, that it was run by inmates themselves, and it was very crowded. It was a litany of abuses.

I read that report and, after reading it, one would ask what State that was located in. On the bottom line, it said it was referring to the Federal penitentiary in Atlanta, Ga.

The Federal Government has already undertaken to do more than it can do. We have already indicated that we certainly do not have the answers to the welfare problems, that we do not have the answers to the problem of crime in our society.

When this country was founded the people who wrote the Constitution reflected the faith of Thomas Jefferson in the people to run their own affairs. They reflected confidence in local electorates to confront local problems. They realized the wisdom of diversity and they set up a Federal system in which we could have a laboratory of experimentation. We could try different ideas on the local level, giving flexibility to the States to try something new. Then if something worked well, perhaps the whole country could consider benefiting from that experience.

Now we have gone full circle over the years. The feeling is a lot of the people do not have the ability to govern themselves. If we leave it up to the local people, those closest to it, the families of the people in the institutions, and he local councils and so on, the feeling is you cannot trust them, you cannot trust them to be concerned about their own kinfolks. We just have to put our faith instead into the people here in Washington to look after the interest of those people.

It is the exact reverse attitude from the faith and confidence that the founders of this Nation expressed in the people themselves and indeed of the democratic process.

Really, I guess I would say that one of the reasons I most resent this piece of legislation, or take offense at it, is that I think, really, it expresses a rejection of the democratic process. It really says the people themselves just do not have sense enough or compassion enough to take care of these kinds of problems, that we have to put it in the hands of unelected people, who are not accountable directly to the people.

I think the Senator is so right: If there is any message I get from the people back home, it is that not only do they not think Washington has come up with all the answers to the problem, they do not think Washington has come up with any answers that make sense at all. When we see what a mess has been made of most of the programs in this country and we look at what the Federal Government has done to the value of the dollar of the working person in this country, and the chaos the Federal Government has put our economy into—and it is the Federal Government; that is where the blame belongs—I think the people are saying, let us handle some of our own problems; we have had all the help out of Washington that we can stand and we cannot afford any more help from Washington.

In fact, there is a question right now whether the country can survive all the help it has received from the Federal Government.

Mr. HELMS. If the Senator will yield, one of my constituents was talking to me the other day and he said, "I have decided the Federal Government cannot solve the problem because it is the problem."

Mr. BOREN. I think the Senator is correct. I think that, as much as anything else, it has become the problem. It has become a burden to the people instead of the help it was intended to be.

I think we have to start drawing the line. I think we have to start breathing some life and creativity back into the Federal system. I hear people say, where are all the greatest innovators, people like LaFollette and people at the turn of the century at the State government level, who were experimenting with these problems. I doubt that there would be room for any of them any more. The Federal guidelines would never allow experimentation with some of those programs today, would never allow them, would not allow them to be tried. We have so changed and stifled the creative ingenuity of the people in local government in this country and, indeed, the people in the private enterprise sector of the economy that we have put ourselves in a national straitjacket.

I hope that the Members of the Senate, my colleagues, will exercise some restraint in this matter and that they will pause to question, do we really have the answers to all the problems this country has, or perhaps could people—even those elected by the citizens of our States—perhaps they should be trusted with making a few of these decisions themselves.

I am kind of confused, I say to my good friend from North Carolina. Obviously, I think if we polled the Members of the Senate and we said, "Do you trust the electorate, do you think the people are wise, basically"—at least, I think, for public consumption, my colleagues in the Senate would all pretty much have to say, "Yes, we think the people are pretty wise." You know, after all, the people were wise enough to elect the 100 people, the 100 men and women, who serve as Members of this body. Yet, sometimes, the 100 men and women of this body turn right around and say, "Yes, they were wise enough to elect us, but we don't think they are wise enough to make any other decisions."

It seems to me if they have shown such great wisdom as to elect the kind of men and women who are here—my friend from North Carolina, my friend from Indiana, my friend from Hawaii, who has joined us—I have to have a little more faith and confidence in these people that they are willing to take care of some of these problems and issues that they know about from experience in their own families, their own neighborhoods, their own towns.

I hope that we can bring a little bit of the spirit of Thomas Jefferson back into

the policies we are making in this body. I say that being one who is very proud to try to follow that tradition. It is time we returned to his policies. The Republic would be much better off for it if we would.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BAYH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

CLOTURE MOTION

Mr. BAYH. Mr. President, I send to the desk a cloture motion.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair, without objection, directs the clerk to read the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the conference report on H.R. 10, an act to authorize actions for redress in cases involving deprivations of rights of institutionalized persons secured or protected by the Constitution or laws of the United States.

Birch Bayh, Lloyd Bentsen, Charles McC. Mathias, Jr., Bill Bradley, Jennings Randolph, John Culver, William Proxmire, John Glenn, Frank Church, Robert C. Byrd, Dennis DeConcini, Harrison A. Williams, Jr., Max Baucus, Gary Hart, Howard M. Metzenbaum, Patrick J. Leahy, Robert T. Stafford, Spark M. Matsunaga.

CIVIL RIGHTS OF INSTITUTIONALIZED PERSONS—CONFERENCE REPORT

The Senate continued with the consideration of the conference report on H.R. 10.

Mr. BAYH. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there now be a brief period for the transaction of routine morning business not to extend beyond 10 minutes and that Senators may speak therein.

The PRESIDING OFFICER. Without objection, it is so ordered.

C. STANLEY BLAIR

Mr. MATHIAS. Mr. President, funeral services were held today in Bel Air, Md., for C. Stanley Blair, a distinguished judge of the U.S. District Court for the District of Maryland.

I have seldom seen such an outpouring of family, of personal friends, of political friends and rivals, of judicial colleagues, and of legal brethren.

It was a tremendous tribute to Judge Blair and expressed how the people of Maryland felt about his remarkable career, a career in which he had served as a member of the General Assembly of Maryland and as secretary of state of Maryland.

He had been nominated by the Republican party of Maryland to be Governor and waged a positive and creative campaign. Finally, his distinguished public service culminated in the U.S. court where he sat for a period of 9 years.

If there was one distinguishing characteristic of Judge Blair's service as a Federal judge, I believe it was the commonsense that he brought to judicial decisions.

He was a good lawyer. He knew the law. He had experience in life and so he knew how Government and business operated.

He was dedicated. He was industrious. But the hard commonsense that he brought to political life and to judicial life was a distinguishing characteristic that is all too rare.

He will be very much missed in the State of Maryland and throughout the country. He was one of the very best of our Federal judges, honored by his colleagues on the bench, as well as by the bar.

Mr. President, Mrs. Mathias and I extend our deepest sympathy to Mrs. Blair and to Judge Blair's father, Mr. Charles E. Blair, as we share the loss of his premature death.

Mr. President, I ask unanimous consent that an article on Judge Blair's life by Mr. Peter A. Jay, which appeared in the Baltimore Sun, be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

MAKING THE BEST OF IT

C. Stanley Blair, who died suddenly on Sunday at the early age of 52, was an engaging and extremely talented politician who had bad political luck. It changed his career, and probably changed his life.

For the last nine years he was a federal judge in Baltimore, and widely regarded as an excellent one, fair and hard-working and knowledgeable in the law. But unlike many lawyers who fool with politics only in the hope that it will one day lead to a judgeship, Stan Blair, given the choice, would have preferred the hurly-burly of elective office to the isolation of the bench.

It would be an overstatement to say that he accepted his appointment to the U.S. District Court with reluctance; he knew it was a prestigious and important job that would be a challenge to any lawyer, and he welcomed challenges. But he surely put on the robes with some regrets, and wore them with a touch of very private wistfulness.

Back in the early 1960s, Mr. Blair was an ambitious young lawyer who was obviously going places. After stints in the merchant marine and the construction trade, he had put himself through college and law school, editing the University of Maryland *Law Review* in the process. He was practicing law in Bel Air as a partner in Harford county's best-known firm. He was bright, gregarious, a good speaker, and in a hurry.

In 1962 he was elected to the House of Delegates as one of three Republicans from normally Democratic Harford county, and served as chairman of the county delegation. Despite his minority-party affiliation, he became even in his freshman term one of the people who counted in the legislature.

Four years later came the first flash of bad luck.

William S. James, the president of the state Senate, announced in early 1966 that he intended to leave his secure Harford county seat to run for attorney general. Mr. Blair, seeing an opening, immediately filed for the Senate. But at the last minute, when he wasn't invited to join any statewide Democratic ticket, Mr. James changed his mind and ran again for his old seat. He narrowly defeated Mr. Blair, who would never win another election.

Spiro Agnew, just elected governor, then named Mr. Blair to the $10,000-a-year part-time job of secretary of state. The position had a variety of official duties, but it really meant that Mr. Blair was the governor's right-hand political man, lieutenant governor in fact if not in title. (The office of lieutenant governor wasn't re-created in Maryland until 1970.)

The Agnew administration, of course, was short-lived. While the governor was off campaigning with Richard Nixon in 1968, Mr. Blair ran the state. After the election, he went to Washington to become the new vice president's chief of staff.

I used to stop in and see him sometimes at the White House, and often came away with the sense that he was restless. He loved power and action, but he didn't like being someone else's spear-carrier, even a quite exalted one. So he left in 1970 to run for governor himself.

That, in retrospect, was fortuitous for it kept him totally clear of the 1973 kickback scandal that brought about the vice president's resignation. He lost the election to Marvin Mandel, but was appointed to the Federal bench by Richard Nixon soon after, and so was out of harm's way when hell began breaking loose in Washington.

(Mr. Mandel, who has been through a lot himself in the last decade, had nothing but respect for Mr. Blair. "We were friends before that election," said the former governor on Monday, "and we were friends after—not close, but friends. He was a fine and honorable man.")

After he became a judge, Stan Blair's old friends saw less of him. He worked long hours keeping up with the many duties of a federal judge on a busy trial court, and while he still managed to play some tennis and go goose hunting on occasion, he didn't have the contact with a wide variety of people he had enjoyed in his political days.

It isn't usual to feel vaguely sorry for federal judges, especially good ones. They're well-paid, respected, and doing useful work. But I always had the feeling, which was reinforced on our infrequent meetings in recent years, that fate had dealt rather harshly with Stan Blair.

He loved being in the thick of things, as he had been long ago in the legislature. He would have loved being governor, and would probably have been good at it. But it was a measure of his strength of character that when these other lives didn't work out, he took what was available and made the best of it. He certainly never wasted his time, which ran out on him much too soon.

THE FEDERAL ELECTION COMMISSION PRESIDENTIAL PRIMARY MATCHING PAYMENT ACCOUNT REGULATION

Mr. PELL. Mr. President, on April 10, 1980, the Federal Election Commission transmitted to the Senate a proposed

regulation pertaining to the administration of the Presidential primary matching payment account. The Commission may prescribe this proposal as a regulation if neither the House nor the Senate passes a resolution of disapproval within 30 legislative days. Through April 22, 1980, 5 legislative days have expired.

Presently, the Commission can suspend primary matching payments to a Presidential candidate who knowingly and willfully exceeds the expenditure limitations under the Federal Election Campaign Act. Such a candidate could receive payments once again if he or she repays the amount by which the limitation was exceeded or agrees to pay any civil or criminal penalties resulting from the violation.

Under the proposed regulation, the Federal Election Commission could suspend primary matching funds to a Presidential candidate who knowingly, willfully, and substantially exceeded the Federal law's expenditure limitations and a candidate who is suspended for exceeding the limitations could no longer receive matching payments. The proposed regulation appears in full at the end of this statement.

Members of the Senate having questions or comments on the proposed regulation may direct them to the Committee on Rules and Administration, Elections Section, 310 Russell Senate Office Building, 224–5647.

The proposed regulation follows:

PROPOSED REGULATION

11 CFR 9033.9 is amended to read as follows:

Part 9033 Eligibility:

§ 9033.9 Suspension of Payments.

(a) If the Commission has reason to believe that a candidate or his or her authorized committee(s) has knowingly, willfully and substantially failed to comply with the disclosure requirements of 2 USC 434 and 11 CFR Part 104, or that a candidate has knowingly, willfully and substantially exceeded the expenditure limitations at 11 CFR 9035, the Commission may make an initial determination to suspend payments to that candidate.

(b) The Commission shall notify the candidate of its initial determination, giving the legal and factual reasons for the determination and advising the candidate of the evidence upon which its initial determination is based. The candidate shall be given an opportunity within 20 days of the Commission's notice to comply with the above cited provisions or to submit written legal or factual materials to demonstrate that he or she is not in violation of those provisions.

(c) The Commission shall consider any written, legal or factual materials submitted by the candidate in making its final determination. Such materials may be submitted by counsel if the candidate so desires.

(d) Suspension of payments to a candidate will occur upon a final determination to suspend payments by the Commission. Such final determination shall be accompanied by a written statement of reasons for the Commission's action. This statement shall explain the reasons underlying the Commission's determination and shall summarize the results of any investigation upon which the determination is based.

(e) (1) A candidate whose payments have been suspended for failure to comply with reporting requirements may become entitled to receive payments if he or she subsequently files the required reports and pays or agrees to pay any civil or criminal penalties resulting from failure to comply.

(2) A candidate whose payments are suspended for exceeding expenditure limitations shall not be entitled to receive further matching payments under 11 CFR 9034.1.

IN CALIFORNIA 800,000 JOBS DEPEND UPON FOREIGN TRADE

Mr. CRANSTON. Mr. President, it is estimated that two-way international trade valued at more than $40 billion passed through California during 1979. While it has long been known that this trade contributes substantially to the State's well-being, the actual extent to which California employment levels are increased by international trade has not been fully appreciated.

The California Council for International Trade (CCIT), California's oldest and largest statewide membership association dedicated exclusively to the expansion of international trade, has recently published a study which concludes that some 800,000 California jobs, or 10 percent of the civilian employment in our State, depend directly or indirectly upon international trade.

This study was compiled by the council in order to increase awareness of the significance of international trade on American employment and to improve prospects for future trade expansion. It is entitled "Who Needs Foreign Trade? California Does."

The council has performed an important public service by compiling this information and I commend their report to the attention of interested members of the public.

Copies of this brochure can be obtained from the council's Secretariat, 1333 Gough Street, room 6F, San Francisco, Calif. 94109.

IRAN: THE NEED TO RESTRAIN OUR MILITARY IMPULSE

Mr. PELL. Mr. President, yesterday the governments of the European community decided to reduce diplomatic ties with Iran immediately and to ban all exports to Iran except food and medicine on May 17, if "decisive progress" is not made by that time toward the release of the American hostages.

The President has striven mightily to persuade our allies to support his policy of sanctions against Iran and I congratulated our President on his excellent work and success in this regard. I applaud the Congress decision, as I too, have long called for a policy of concerted United States-European action in responding to both the crises in Iran and Afghanistan. The President now has European support, and concerted action should now be given a reasonable chance to succeed.

What the Europeans have done should not, however, be misinterpreted as support down the line for a get tough policy with Iran. Rather, the European decision reflects a fear that the United States is eager to abandon diplomacy in favor of military action. In my view, the European willingness to join in sanctions against Iran is motivated more by a desire to buy time in the hope that military action, with potentially calamitous consequences, can be avoided than by strong support of the United States.

I share these concerns of our European allies. I also share the view of the United Methodist Church, which yesterday implored President Carter "not to give in to those who counsel military intervention or to take steps which will lead eventually to war." Accordingly, I for one oppose the unilateral use of military force at this time.

In diplomacy, as in life, it is wise to avoid public ultimatums and threats of violent action. The spirit of Jingoism must not be revived. Although our national patience and pride are being sorely tested, and the temptation is strong to "teach Iran a lesson"—particularly in the heat of an election campaign—let us not give up on the search for a peaceful solution. The effort to isolate Iran and persuade the political forces which are still evolving in that country that Iran's true national interest lies in resolving the hostage crisis has not yet been played out. In this connection, we should not forget that it was only after 11 months of painful negotiations in 1968 that the release by North Korea of the 82 crewmen of the *Pueblo* was finally achieved.

If military action is taken, I fear that the first action will be followed by another and then another. We saw elements of this in Vietnam. The lives of the very people that the military actions are designed to save will be jeopardized, and the Soviets may be tempted to intervene in order to "save" Iran. Military action against Iran could also inflame the Muslim world just at a time when we have achieved some success in developing support for our condemnation of the Soviet invasion of Afghanistan.

Before going further, I believe our President should consult with Congress under the terms of the war powers resolution, the relevant provision of which reads as follows:

The President in every possible instance shall consult with Congress before introducing United States Armed Forces into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances.

In my judgment, recent statements by the President indicate that our involvement in hostilities with Iran could occur in the not too distant future. Therefore, our President should take the Congress into his confidence by setting forth the military options he is clearly considering and the objectives he hopes to achieve if he exercises any of those options. And he should seek the counsel of the Congress on those options and objectives. There is an old saying that the Congress should be in on the takeoff as well as the landing on policy decisions affecting the security of the Nation. Now is the time to discuss calmly whether there should be a takeoff in turbulent and potentially stormy weather.

Mr. President, columnist Clayton Fritchey recently wrote a very perceptive and persuasive article on the need for consultations with Congress pursuant to the war powers resolution. I ask

unanimous consent that the full text of this article, which originally appeared in the Washington Post of April 21, be printed at this point in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

MIXED SIGNALS ON IRAN

(By Clayton Fritchey)

It is not surprising that America's allies feel imposed upon in being required—without prior consultation—to reinforce a White House crackdown on Iran about which they have grave misgivings. However, if it's any comfort to our foreign friends, they are not alone in being ignored by the president in the formulation of a policy that could well lead to military involvement. Congress has not been consulted either.

There is no law, of course, obliging the president to get a green light in advance from the allies, but there is one—the 1973 War Powers Resolution—that requires prior consultation with Congress on military initiatives, except in an "emergency" when there is no time to consult.

For the last two weeks or so, Carter and his spokesmen have been threatening to take drastic steps that "might very well involve military means" if the economic sanctions already imposed fail to free the hostages. The time for decision, says Zbigniew Brzezinski, the national security adviser, is "a matter of weeks at the most."

Nobody in the administration is counting on the present sanctions (largely symbolic), or the severing of diplomatic relations with Iran, to win the release of the hostages. Hence, the United States is on the brink of what Carter says "would be very strong and forceful" action. Both a naval blockade and the aerial mining of Iranian oil ports have been intimated.

The president's tough new posture has been described by his press secretary as a public relations triumph, which it may be for the moment. But in adopting it, Carter has paid scant heed to the War Powers Act that was enacted in the wake of Vietnam to inhibit chief executives from initiating military moves entrely on their own.

It may be that Carter intends to consult Congress before using the armed forces. If so, the time to do it is now—not at the last minute, or after the fact. It also may be that he has privately confided in some of his friends on the Hill, but there is no record of it.

In any case, that's not the kind of broad conferring called for in Section 3 of the 1973 resolution. It provides that "the president in every possible instance shall consult with Congress before introducing U.S. armed forces into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances."

The resolution further says that the president's powers in such situations "are exercised only pursuant to (1) a declaration of war, (2) specific statutory authorization, or (3) a national emergency created by attack upon the United States, its territories or possessions, or its armed forces."

Pat Holt was chief of staff for the Senate Foreign Relations Committee when the resolution was debated and adopted. This is the way he interprets it:

"Since both a declaration of war and specific statutory authorization require an act of Congress, this means that the president can act on his own authority in the case of hostilities or of an imminent threat of hostilities only when there is a national emergency caused by an attack on U.S. territory or on U.S. armed forces. This does not include a national emergency arising from other causes; nor does it include attacks on civilian Americans."

The dilemma of our European and Asian partners has aroused sympathy in unexpected quarters. Ronald Reagan, for instance, is saying, "A long string of conflicting signals from the White House, State Department and the National Security Council to the allies clearly is causing them to wonder if the Carter administration really knows what it is doing." He has a point.

The allies, being so dependent on Persian Gulf oil, naturally are not eager to join the United States in economic and diplomatic warfare against Iran, let alone military involvement. They feel it would not only be against their best interests, but against the best interests of the alliance as well.

There is also concern here and abroad that a resort to raw force could be fatal for the hostages and jeopardize the long-range interests of the United States in the whole area, especially if Iran, in desperation, should turn to neighboring Russia for help.

Since Carter pursued a constructive policy of patience and quiet diplomacy for almost six months, why not extend it for a couple of more months to give the new Iranian parliament, now being elected, a chance to resolve the hostage question, as proposed by Ayatollah Khomeini? Even if it turns out to be just another delaying tactic, there is little to lose.

The danger to the hostages, who have been well treated, is not losing their liberty between now and summer, but the possibility of losing their lives if U.S. armed force is invoked. Being confined is no picnic, but it is certainly better than being killed.

APPOINTMENT BY THE VICE PRESIDENT

The PRESIDING OFFICER. The Chair, on behalf of the Vice President and upon the recommendation of the majority and minority leaders, pursuant to Public Law 86–420, appoints the following Senators to attend the Mexico-United States Interparliamentary Conference, to be held in Washington, D.C., May 5–8, 1980: the Senator from Nebraska (Mr. ZORINSKY), the Senator from Arkansas (Mr. PRYOR), the Senator from New York (Mr. JAVITS), the Senator from New Mexico (Mr. DOMENICI), the Senator from California (Mr. HAYAKAWA), and the Senator from New Mexico (Mr. SCHMITT).

ECONOMIC ECOLOGY

Mr. HEFLIN. Mr. President, I introduced a bill which called for an inflation impact statement to be presented to the Senate by the committee that proposes legislation showing the inflationary impact on the economy that the proposed legislation might bring about.

In connection with this, an editorial appeared in the Alabama Journal, Montgomery, Ala., dated April 10, 1980, entitled "Economic Ecology."

I ask unanimous consent that the editorial be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

ECONOMIC ECOLOGY

For years, businesses have been required by federal law to file environmental impact statements with the Environmental Protection Agency before beginning new construction projects. The value of the requirement is that it forces industry to take environmental considerations into account from the beginning, instead of ignoring them until some possibly irreparable damage has already been done.

Alabama's Sen. Howell Heflin is apparently quite impressed with the results of this requirement—so impressed, in fact, that he wants it extended to cover Congress itself as well as private industry.

The impact Heflin is primarily concerned with, however, is not environmental but economic. A bill he recently introduced would make a statement of any proposed legislation's economic impact a prerequisite for consideration by the U.S. Senate.

Before the Senate could consider any bill, in other words, its effect on the economy would have to be objectively evaluated, just as the effects of a proposed factory on the air, water and other aspects of the natural environment must now be scientifically evaluated.

If a bill would increase inflation, the impact statement would have to make that clear; then it would be up to the Senate as a whole to determine whether such an increase were tolerable or not.

An obvious objection to this proposal is that economics is still far from being the exact science that chemistry and biology are. While there's little room for disagreement about the effects of given substances on the environment, learned economists still advance inflation cures that are as incompatible as bloodletting and antibiotics.

Still, the virtue of Heflin's bill is that it would force senators to at least consider the economic consequences of their votes before they cast them, instead of after the damage has already been done. As Heflin points out, that's precisely the kind of consideration that has been conspicuously lacking thus far, and it's hard to believe that it wouldn't result in more conscientious spending policies.

Since there's nothing the federal government needs more, the Senate should give Heflin's approach a try. We have little to lose and possibly a great deal to gain from the experiment.

COMPREHENSIVE STEPS NEEDED FOR OUR SURVIVAL AND SECURITY

Mr. TSONGAS. Mr. President, the United States was strong beyond challenge in a world of $2-per-barrel oil that pretended to be unlimited. With OPEC oil now averaging around $30, and with much of its supply dependent on hostile states and precarious shipping lanes, the age of cheap energy is over. Price eruption and supply disruption in energy will bring wrenching, fundamental changes in our economy and throughout American society. How and where we live and work—the patterns of our society—have been influenced greatly by the availability of cheap energy, and the assumption that it would continue. A fundamental transformation has begun and will accelerate during the next 20 years—an explosion of crises and opportunities which we must realize, analyze, and direct.

In order for this Nation to survive and ultimately prevail in this dangerous time of transition, every level of government and every segment of society must contribute. New planning must go far beyond energy policy as we think of it now. Energy awareness must infuse a com-

prehensive reexamination of practices and policies in many areas, including transportation, career training, foreign trade, housing, recreation, settlement patterns and urban revitalization. We must incorporate energy reality into all decisionmaking—whether personal or governmental. The only alternative is that energy shortages and soaring prices will control our lives and make decisions for us.

The need for thorough planning and hard choices is acute in the Commonwealth of Massachusetts. We are 80-percent dependent on oil, and 80 percent of that is imported. In response to our extreme vulnerability, I recently proposed "the Massachusetts plan," a comprehensive framework for the State's future. It makes over 250 recommendations to government, business, community groups, and private citizens. It seeks to provoke comment, debate, additional proposals, and action.

The plan is a proposed blueprint for the future of Massachusetts, but I want very much to share it with my colleagues. Many of its proposals would work anywhere in the United States, thereby contributing to our national security. Moreover, this document, which was released in Massachusetts on April 10, will be strengthened by widespread, detailed debate.

Mr. President, I ask unanimous consent that "The Massachusetts Plan" be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE MASSACHUSETTS PLAN: THROUGH SURVIVAL TO STABILITY

I. INTRODUCTION

The single dominant phenomenon during the next 20 years will be energy. Its price—and more critically, its supply—will set in motion self-sustaining, market dynamics that will reward the foresighted and crush the complacent.

As a nation, we are unprepared.

As a state, we are unprepared.

As communities, we are unprepared.

As individuals, almost all of us are unprepared.

This plan seeks to confront the future and prepare for it. Its simple premise is that our state can survive the inevitable body blows of the future only if we so choose. And by choosing, we can craft a position of relative invulnerability that will serve as our major economic foundation.

The energy situation is, indeed, the equivalent of war. It threatens Massachusetts more gravely than many less energy-dependent states. We are already suffering economic injury without any plan for self protection.

War it is, and it's about time we began the mobilization.

II. THE PLAN

The plan asks: What resources don't we have? What resources do we have? What kind of economic base can we compete for and how do we maximize that capacity to compete?

A. What resources don't we have? The fact is that we don't have fossil fuels within our borders. This means the following:

1. Every dollar spent on oil, gas, and coal, for heating, transport, and commercial use is a dollar exported from our state. The greater the use of these fossil fuels, the greater will be the drain of our capital.

2. Every economic activity dependent upon the supply of these fossil fuels is in a critical, precarious condition. Any wise decisionmaker in a fossil fuel-based, energy intensive industry will, if possible, locate, relocate, or expand where the supply is.

3. Every personal activity (i.e., driving to work, heating one's home) is subject to wildly escalating prices and interruptions, thus hindering those activities. Businesses dependent on a human resource base that engages in these activities will, if possible, gravitate to where the disruption is minimized.

B. What energy resources do we have? The fact is that we have remarkably diverse alternative energy resources (resource recovery, low-head hydro, wood, solar, wind). We have enormous conservation potential that can drastically cut our per capita fossil fuel consumption.

This means the following:

1. Every dollar spent on indigenous energy sources (i.e., weatherizing one's home) is a dollar multiplying through the system, reinforcing our economy, not draining it.

2. Every economic activity based on an indigenous energy resource (e.g., the RESCO energy supply to General Electric in Lynn) is for all intents and purposes secure from supply and price disruptions—and thus vitally stable. (See Section III.A.5 and Section IV.B.1.)

3. Every human activity based on an indigenous energy resource (e.g., living in passive solar heated homes, bicycling or walking to work) is also secure, and thus makes more attractive to the decision-maker the location in Massachusetts of human resource based industries. (See Section III.6.).

C. What industries can we compete for and how do we increase our capacity to compete? We can compete for energy intensive industries to the extent that we can link those industries to indigenous energy supply. We can compete for energy non-intensive industries (such as those involved with high technology, health, education, service industries, traditional industries with specialized skills) if we provide the milieu that such industries favor: adequate supply of skilled personnel, assured access by workers and management to the workplace, reasonable independence from energy supply shocks for workers and management.

The Massachusetts Plan is a blueprint for action in each of these areas. It outlines proposed federal, state, local, corporate, and individual decisions which, taken as a whole, will protect Massachusetts from imminent danger and potential disaster. It is a framework to hold onto the human and corporate resources that we have, and to secure from other states newcomers who will recognize the reinforced stability and strength of Massachusetts.

I believe there is an urgent need for serious public debate on Massachusetts' response to the energy crisis of the next two decades. This plan is my effort to open that debate. It is provocative and will, no doubt, prove controversial. But, it is offered with the hope and expectation that suggestions and criticism will improve it. It is an invitation to every Massachusetts citizen to join the debate.

III. ENERGY: THE PRIORITY OF RENEWABLE RESOURCES AND CONSERVATION

Massachusetts must seriously embrace renewable resources and energy conservation. This basic priority will allow us to maximize a dependable energy resource base, and stem the current $6 billion-per-year capital outflow from Massachusetts for energy resources. The report of the Harvard Business School's Energy Project and many other comprehensive scientific analyses are in agreement that conservation and renewables are our energy future.

They are an absolutely urgent priority because the oil market will deteriorate rapidly in the 1980's. Four nations openly hostile to U.S. interests—Iraq, Iran, Libya, and Algeria—produce one-third of OPEC's oil. Many of the more moderate OPEC nations are reaching production peaks. Domestic oil and gas production peaked several years ago despite increased drilling activity. Even with decontrol, domestic production is expected to decline steadily during the 1980's.

Price eruption and supply disruption in energy are inevitable. They will bring sweeping societal change because how and where we live and work have been influenced greatly by the availability of cheap energy and the assumption that it would continue. A fundamental transformation now is taking place, which we must realize, analyze, and direct.

Massachusetts citizens face extreme, disruptive changes in their lives due to the energy crisis:

Exorbitant energy prices and the resultant economic shocks will make home ownership difficult and will cause abandonments of marginal housing to skyrocket.

The cost of commuting will force some workers into unemployment and create labor shortages for firms located far from their employees.

Gasoline prices and shortages will devastate tourism and retail industries dependent on automobiles. (See Section IV.B.2.)

The Massachusetts economy will be drained by the cost of importing energy. Businesses and their highly skilled workers will head for the Sunbelt.

While the tax base shrinks, the need for social services will grow.

The need for fuel supplies will result in waivers of environmental standards. The burning of coal and high sulfur oil without pollution control equipment will result in significant health costs and will greatly reduce environmental quality, especially in cities. (See Section III.B.)

There is no rationale behind our state of unpreparedness. Massachusetts produces only 3 percent of our energy needs, which causes billions of dollars to drain from the state's economy annually. Massachusetts is 80 percent dependent on oil, of which 80 percent is foreign, and yet 80 percent of our homes are underweatherized.

Even if energy planning were adequate nationally—and it is not—it likely would be far short of what the facts demand for Massachusetts. Quite simply, our energy position will be the single most important factor influencing our lives during the next 20 years. Without careful planning and hard choices, our lives will be shaped and Massachusetts misshapen by drastic energy disruptions. Prodded by our extreme energy circumstances, we must begin to lead the nation into the energy future.

A. Conservation and renewable resources

The state's only indigenous energy resources are conservation, solar, hydro, wind, wood, and other renewable resources. Their widespread acceptance depends on millions of individual consumer and business decisions. Private citizens, corporations, community groups and government must all work together to make Massachusetts first in the nation in energy conservation and renewable resource development.

During the past several years, I have supported the outstanding efforts of the New England Energy Congress to develop an action energy plan for our region. Many of their recommendations are reflected here in the broad context of Massachusetts' economic future.

1. Federal role:

The federal government must provide programmatic leadership, financial assistance, and regulatory guidelines. Washington must provide financial incentives to individuals and businesses to invest in conservation and renewable resources; funding for state and local governments to develop and implement energy planning and programs; research, development, demonstration, and commercialization activities for new technologies, and regulations to ensure efficiency standards

for buildings, vehicles, and appliances. In particular, the federal government must:

a. Enact and fully fund the Conservation and Solar Bank. This legislation, which I authored, would provide interest subsidies on loans used to finance conservation and solar measures in residential and commercial buildings.

b. Enact and fully fund the Community Energy Act. This bill, which I authored, would provide energy block grants to local governments for planning, programs, and projects in energy conservation and renewable resource development.

c. Extend Daylight Savings Time in order to reduce the amount of energy used during the early evening peak.

d. Greatly expand the low-income weatherization program and make program modifications to improve effectiveness.

e. Establish a program to weatherize multi-family homes.

f. Provide aggressive programs for conservation and renewables in federal buildings. Results from the Norris Cotton Federal Building, an energy conservation demonstration project in Manchester, New Hampshire, should be reflected in construction of all new federal buildings.

g. Develop national building energy standards to require all new buildings to conform to strict conservation standards and incorporate passive solar design elements. (See Section V.B.I.)

h. Target all federal funding for housing, industrial, commercial, public and private development to conservation efforts. Include strict energy standards for all new buildings and require siting near mass transit or require development of mass transit capability. Use highway funding to promote efficient traffic patterns and develop bike paths.

i. Provide an aggressive marketing and commercialization program to expedite the development and widespread use of new conservation and renewable technologies.

j. Establish a program to encourage exports of solar technologies, including demonstrations, export financing, tax credits, information sharing, and international training programs. I plan to file such legislation this year.

k. Fund regional vocational training programs in conservation and solar technologies. (See Section IV.C.1.)

1. Greatly expand effort to raise public awareness and disseminate energy curricular material to public school systems.

m. Provide incentives to federal employees to use mass transit, bikes, vanpools, and carpools. (See Section V.B.2.)

n. Purchase fuel efficient vehicles for official use.

o. Expand eligibility for renewable and conservation tax credits.

p. Levy a 5% gas tax to fund increased federal investment in mass transit for both capital and operating assistance.

q. Extend automobile fuel efficiency standards beyond 1985, requiring 40 m.p.g. fleet average by 1995.

2. State role:

The Governor and State Energy Secretary Joseph Fitzpatrick have initiated several major conservation and renewable resource measures. If we enact the Governor's program and expand these efforts, Massachusetts can become a national model, demonstrating the full range of activity that a state without significant indigenous fossil resources can implement.

State government must:

a. Ensure that every residential and commercial building in Massachusetts receives an energy audit. The Governor and Energy Secretary Fitzpatrick have proposed a Residential Conservation Service program to provide audits that expands and improves upon the federally mandated program. State Senator Brennan has proposed legislation to require an energy audit before a home is sold. Both initiatives deserve strong support. We should also consider requiring weatherization or funds for weatherization in escrow at time of transfer.

b. Modify state utility regulation to encourage utilities to expand activities in conservation and the use of renewable resources.

c. Work with utilities, and local governments to exploit cogeneration opportunities and convert 100 percent of Massachusetts urban solid waste to energy. (See Section IV. B. 1. a–b.)

d. Streamline state licensing procedures to expedite new renewable resource projects. The Massachusetts Energy Office's program for low-head hydro is regarded as a national model. This should be expanded to all decentralized renewable resources.

e. Adopt a strict building code that significantly reduces energy use and includes passive solar design elements. DOE has already recognized the state's Building Code Commission for its efforts and refers to it as a national model.

f. Encourages conservation and solar energy in public buildings throughout the state. Massachusetts' recently enacted Alternative Energy Property and Conservation Program will provide $25 million in financial assistance to state, local, and public authorities.

g. Give authority to local governments to enact conservation ordinances and utilize zoning and subdivision regulations to conserve energy. The Governor is preparing legislation to do this.

h. Provide subsidies to encourage conservation and renewable resources. The Energy Development Caucus has proposed an Alternate Energy Development Corporation to provide subsidized financing to consumers and small businesses, and the Massachusetts Energy Office has proposed a program similar to the Conservation Bank to provide interest subsidies.

i. Establish a statewide energy extension service and consumer protection service to provide public information and to prevent consumer fraud.

j. Link automobile excise taxes to fuel efficiency and not age.

k. Enforce the 55 m.p.h. speed limit more strictly and increase fines for violations.

l. Levy a 5 percent gas tax to fund increased state investment in mass transit.

m. Provide exclusive rights of way on highways for van and car pooling and buses.

n. Structure tolls on highways and bridges to encourage van and car pooling.

o. Extend the Massachusetts Bay Transit Authority route system.

p. Make the MBTA a more efficient system by providing a stable funding mechanism and increasing the productivity through better labor and management practices.

q. Finance, expand, and integrate, intercity bus transit through regional transportation authorities and private bus companies.

r. Maximize the use of the commuter rail.

3. Local role:

Local governments have many institutional tools to influence energy use. Because conservation and renewable resources involve decentralized activities, they are more effectively managed at the local level than the federal level. (The Community Energy Act, which I authored, would provide the financial resources to communities for energy initiatives.) Comprehensive community energy planning will play the most critical role in our efforts to make Massachusetts more self sufficient.

Local communities must:

a. Start comprehensive energy planning to assess local energy problems and resources, and map strategies to reduce consumption and utilize renewables. The Franklin County Energy Conservation Task Force is one leader, with projects including recycling centers, fuelwood cooperatives, street lighting reductions, and comprehensive inventories of energy use and local supply potential. The Button Up Northampton program is another important community effort, with conservation education through the school system, a model energy audit program, and plans for bulk purchase of insulation for cost economies.

b. Initiate mobilization using community and neighborhood groups to provide public information, technical assistance, and weatherization assistance. Fitchburg's Operation FACE demonstrated how much can be done.

c. Weatherize single and multi-family housing through rehabilitation programs. Cambridge has proposed an innovative program to do this.

d. Adopt zoning and land use plans that protect sun rights and encourage efficient development patterns along transit corridors. (See Section V. B. 2 and D.)

e. Initiate public awareness programs and education programs in the schools. (See Section IV. C. 1 and VI. D. 3.)

f. Reduce municipal energy use through conservation and solar measures in public buildings and procurement practices that consider energy efficiency.

g. Actively develop low-head hydro, resource recovery, and district heating projects.

h. Encourage neighborhood co-ops to purchase insulation and conduct solar demonstrations.

i. Purchase fuel efficient vehicles for town employees (e.g., police, building inspectors).

j. Use school buses to expand mass transportation capacity for special activities.

k. Encourage bicycle usage by providing bike racks, bike lanes, and bike paths (e.g., the proposed Greenbush Railroad Right of Way Project, which would provide a 7½-mile bike route from Scituate to the Hingham commuter boat).

4. Utilities' role:

Utilities are in an ideal position to promote residential conservation and solar and to use decentralized options for renewable electric generation such as cogeneration, low-head hydro, and wind. A diversity of generation sources will increase reliability, and decentralized options will require lower capital investments.

Massachusetts utilities must:

a. Offer no interest or low interest loans for residential conservation and solar investments. Pacific Gas and Electric in California, one of the largest private utilities, is offering no interest conservation loans to 1 million customers over the next 10 years. Pacific Power and Light in Portland, Oregon offers principal deferred loans for solar.

b. Establish creative programs of public information to promote efficient energy use and to discourage peak use. Hingham's municipal utility has cut its electric demand through such a program.

c. Offer peak load pricing and install time of day meters.

d. Encourage small power producers through favorable purchase rates and nondiscriminatory back-up arrangements. Work with industry to install cogeneration equipment. Work with small producers to resolve interconnection and loan management issues. (E.g., New England Electric developed a creative financing arrangement for low head hydro in Lawrence.)

e. Initiate a load management program by installing load control devices on appliances and installing residential storage systems. New England Electric is initiating a major load management program.

f. Develop district heating or total energy systems where feasible (e.g., in new developments).

g. Actively demonstrate newer technologies such as fuel cells, utility scale wind machines, residential and commercial photovoltaics. Many utilities across the country have been gaining experience with these systems, which are expected to become competi-

tive over the next 2 to 10 years. Southern California Edison is installing a 3Mwe wind machine and is planning hundreds more.

h. Actively initiate low-head hydro, wood fired generation, and municipal solid waste projects. Many utilities in our state have started to do this. Boston Edison is evaluating resource recovery; the Massachusetts Municipal Wholesale Electric Company is investigating 50Mwe worth of low-head hydro.

i. Utilities should work with local governments and developers to encourage energy efficient and renewable resource developments.

5. Corporate role:

Corporations can be a tool for promoting development of conservation and renewables. Corporations can individually utilize energy efficient processes and expand their use of renewables. They can also act as the catalyst for the energy efficient behavior of their employees.

Massachusetts corporations must:

Obtain a comprehensive energy audit and take steps to reduce energy consumption and use renewable resources in company facilities.

b. Develop cogeneration, total energy systems, more efficient industrial equipment, and solar process heat. (See Section IV. B. 1.)

c. Provide employee incentives to take mass transit, carpool, vanpool, or bicycle (e.g., MBTA pass programs, flexible hours, preferential parking, elimination of free parking, vanpool financing, and shower facilities).

d. Purchase efficient automobiles for company fleets and institute a regular automomobile maintenance program.

6. Individual role:

Energy cost and supply interactions most drastically affect the lives of individuals. We have had sufficient warning. In making decisions in our personal lives, we must seek to protect ourselves and our families from the impact of the coming energy crisis.

There are many steps we can each take. Some examples are:

a. Purchase fuel efficient automobiles, and use your automobiles more efficiently.

b. Obtain an energy audit and install weatherization measures.

c. When buying or renting a home, consider energy factors such as availability of mass transit, energy efficiency of the structure, and suitability for solar retrofit.

d. Schedule energy consuming activities (i.e., showers, laundry) during off-peak hours.

e. Live as close to workplace as possible.

f. Turn down the water heater and the thermostat, and purchase only energy efficient appliances.

g. Use public transportation whenever possible. (See Section V. B. 2 and C. 2.)

B. Other options

In the long term, renewable resources and fusion could provide most of energy supply, but projections indicate that in 2000, fusion will not yet be commercial and renewables will provide only between ¼ and ⅓ of our energy demand. Depending on the effectiveness of our efforts at reducing electric demand, load management, industrial cogeneration, and tapping our indigenous resources, we may need to build additional power plants.

We should not build new oil-fired power plants and, when possible, we should reduce our reliance on base-load oil-fired capacity. By the mid to late 1980's, we will be able to evaluate electric demand growth, assess the results of our efforts in renewables and conservation, and determine how large a gap exists in the mid-term. For all practical purposes, after we maximize efforts to bring online decentralized renewable resources, the choice is between coal and nuclear. Given what we know about the short and long term environmental impacts of coal, that option should be avoided. While we must develop more effective environmental controls and new coal combustion and conversion technologies, the carbon dioxide problem (greenhouse effect) which threatens massive climate changes should preclude any large scale shift to coal.

If the nuclear option is to remain viable, we must redouble our efforts to make nuclear plants safer, reestablish the credibility of the Nuclear Regulatory Commission, and restore public confidence. The NRC must be reorganized to strengthen the focus on protecting public health and safety. The lessons of Three Mile Island must be incorporated in all existing and new plants. The technical capabilities of utilities must be expanded. Evacuation plans must be put in place. A technical and political solution to waste disposal must be vigorously pursued. The NRC and the nuclear industry must adopt rather than resist fundamental changes in organization, procedures, and attitudes.

To be realistic, these efforts will take several years. But given our state's dependence on oil for electric generation, we must be prepared in the late 1980's to accept additional nuclear plants—if we have resolved the problems with nuclear and have maximized our efforts in conservation and renewable resources. These are absolutely essential prerequisites. Utilities should not be allowed to build new nuclear capacity unless and until they have demonstrated true leadership in the conservation and renewable resource area as TVA has done. Incurring the costs and risks of nuclear power while allowing relatively benign alternatives to remain unused is not in Massachusetts' vital interest.

The present generation of light water reactors should be seen as an interim option only. Long term reliance on plutonium cycle breeder reactors with their nuclear proliferation risks must be avoided. Research and development efforts in fusion offer some optimism with respect to bringing this new energy source on-line early in the next century. Fusion, coupled with conservation and renewables, should provide electric generation for future generations.

During the next 20 years we must take steps to diversify Massachusetts' energy base to minimize supply interruptions. In the short run we must mount an all-out effort to reduce electric demand, manage electric loads better, and tap indigenous, renewable, decentralized sources. In the midterm we may have to add some coal and nuclear capacity but only under stringent environmental, health and safety standards.

IV. ENERGY EFFICIENCY AND INDUSTRIAL DEVELOPMENT

A. Introduction

Energy efficiency must be the prime determinant in our Commonwealth's industrial development strategy. The energy facts for business and industry are no different than for individuals. Massachusetts does not have significant supplies of fossil fuels within its borders. Every year Massachusetts suffers a multi-billion dollar capital outflow for imported fuels. Dependence on imported fuels also guarantees constantly escalating prices and the continuous threat of supply interruptions. Although industry can and will pass along fuel price hikes to consumers, the threat of supply interruptions is devastating to any business enterprise.

For the Massachusetts economy to survive the energy crisis and to remain stable and vibrant, industrial energy needs must be met. In particular, energy intensive industries must be closely linked to indigenous energy supplies, and a concerted effort must be made to ensure that our Commonwealth remains a highly competitive environment for industries with low energy use and high labor intensity.

B. Energy intensive industries

1. Retain existing energy intensive industries by ensuring operational efficiency and maximizing use of indigenous resources that can provide reliable fuel supplies at relatively stable prices.

a. Resource recovery: expand the use of waste for energy.

(1) Make maximum use of energy from waste recovery.

(E.g., the United States converts 1% of urban waste for energy; Switzerland converts 40% and Denmark converts 60%.)

(2) Expand current efforts in Massachusetts to tie in waste recovery facilities with energy intensive industries (e.g., in Saugus, the RESCO facility's tie-in with General Electric in Lynn; the Braintree Resource Recovery Plant tie-in with Weymouth Art Leather Co.; Norton Company and Monsanto plans for similar ventures in Worcester and Lynn).

(3) Increase federal assistance for resource recovery through tax subsidies, price supports, and loan guarantees.

(4) Develop state and local government capacity for planning and site selection of resource recovery facilities.

b. Cogeneration: exploit energy wasted in industrial process steam. Require users of process steam to cogenerate electricity for their own use and for sale to the grid, and remove institutional and regulatory barriers to this activity.

(1) Estimated energy potential from cogeneration in New England States is an additional 1000 Mwe—the equivalent of a new nuclear plant.

(2) Cogeneration requires a cooperative effort of industry, utilities, state, and federal governments.

c. Solar energy and energy efficiency: aggressively pursue all sources, including:

(1) Heat recovery/reuse of waste streams (e.g., the thermal recovery system in the Bolt Beranek and Newman Inc. building in Cambridge, which cost approximately $100,000, created unexpected space savings, and is saving $70,000–$75,000 per year in energy and maintenance costs).

(2) Use of smaller electric motors and lights.

(3) Insulation.

(4) Computer controlled temperature and lighting (e.g., the Malden Housing Authority's energy monitoring computer for several hundred subsidized housing units).

(5) Solar energy process heat.

2. Develop comprehensive planning to protect the tourist industry, the number two industry in Massachusetts. The tourist industry is 80 percent dependent on automobile travel, and is therefore especially vulnerable to periods of energy instability and fuel shortage, when tourist related travel is considered non-essential. Federal, state, and local governments must work to increase public transportation access to tourist facilities and to reduce tourist travel by automobile.

a. Federal, state, and local policies:

(1) Financial assistance to promote integration of transportation and lodging facilities with tourist areas.

(2) Financial assistance to expand and improve public and private mass transportation access to tourist areas.

(3) Development of bicycle paths into and within tourist areas (e.g., the 65-mile Boston to Cape Cod Trail).

(4) Expansion of water transportation facilities to tourist areas.

(5) Expansion of Masspool program for tourist ridesharing and expansion of bus service program to tourist areas for low and moderate income families.

b. Private sector policies (hotels, airlines, museums, art galleries, recreation facilities, bus companies, commercial businesses, and restaurants):

(1) Development of package trips and tours based on public and private mass transportation.

(2) Increased development of brochures, maps, guidebooks, and informational materials which provide information on mass transportation access to tourist areas.

(3) Support for federal, state, and local financial assistance to expand and improve public and private mass transportation access to tourist areas.

C. Energy nonintensive industries

Even after Massachusetts maximizes its self-sufficiency in energy by coordinating energy intensive industrial development with indigenous energy resources, our state will continue to suffer in competition with oil-rich states for energy intensive industries. Economic development efforts should be aimed at low energy consumption industries. We must increasingly look to industrial sectors where human resources, a Massachusetts strength, are the key input. Service industries such as education, health, and insurance must remain strong elements in our economy.

We must recognize that, to a great degree, our future rests on our ability to attract and accommodate high technology firms. The high technology industry, a relatively low energy consumptive industry, is now and must continue to be the showcase industry in the Massachusetts economy. High technology companies are non-polluting exporters of high value-added products and importers of income. They sell in a world market, which contributes positively to the domestic economy of the U.S. trade balance, and they attract skilled workers. Massachusetts must educate more productive workers for the high technology industries, which currently face a manpower shortage. We must provide these industries with energy efficient transportation facilities and improved export capability. (High technology industries export 34 percent of their production.) We must reform tax policies to permit the necessary investment in these firms to take place. Finally, we must begin to expand our use of Massachusetts based fish and agricultural products.

1. Development of skills availability.

a. We must ensure that school curricula, at all levels of education, train students in marketable skills.

b. The state should encourage high technology firms to establish engineering scholarships for public and private educational institutions such as the University of Massachusetts, the University of Lowell, Massachusetts Institute of Technology, and Northeastern University. The state should increase funding for engineering programs at public institutions and continue to develop and fund community college programs for technical training. (Governor King and Secretary Kariotis should receive full support for their efforts to focus manpower resources on technical training.)

c. The federal school loan program must be improved. The maximum loan limits must be made more realistic. We must reward future engineers with more generous than average loans.

d. Congress must pass the Research Revitalization Act, S. 2355, which I introduced in March as an antidote to economic stagnation and declining productivity. It would award a tax credit to any firm that contributes money to a university for research—thus creating a cost-effective mechanism to encourage research with practical applications in business and industry. It would provide universities with funds to pay students assisting in such research endeavors.

2. Improvement of Massachusetts transportation:

a. Railroads:

(1) Congress is in the process of deregulating the railroad industry in an effort to allow the rate flexibility necessary to provide capital for reinvestment. Railroads constitute an important and valuable infrastructure which we must maintain.

(2) The Northeast Corridor Improvement Project must be completed as soon as possible with federal assistance. This should decrease transit time and make rail more competitive.

(3) Where appropriate, the state or federal government should buy railroad rights-of-way if the private company is incapable of maintaining them.

b. Massport must continue active promotion of Boston as a major transport facility—a gateway to the United States for foreign shippers and to Europe and other foreign markets for American business and industry. Massport must continue to:

(1) Improve cargo facilities to strengthen our economic base (e.g., increase air freight capacity by building the Bird Island Flat facilities at Logan).

(2) Pursue state and federal funding to further develop the Port (e.g., expand the Castle Island facility, fill 38 acres of the finger piers for containerport facilities, and develop the South Boston Naval Annex property).

(3) Promote intermodal linkage between rail and air or ship transport.

c. The Massachusetts Aeronautics Commission must promote the development of air transportation for Massachusetts products (i.e., additional development of Worcester airport for air freight for Massachusetts high technology firms).

d. The trucking industry must pressure vehicle manufacturers to produce the most efficient vehicles possible, and must promote fuel efficient transit practices within the industry (e.g., reduce trips with empty vehicles).

3. Expansion of export capability.

a. The Export Administration Act, passed by Congress in 1979, attempts to give the Commerce Department input into the Defense Department's awarding of high technology export licenses. It cannot be allowed to fail.

b. Federal assistance must be provided to make U.S. exporters competitive:

(1) The Export-Import Bank must be put on equal footing with the export banks of our competitors.

(2) Taxation of U.S. companies' efforts abroad must be commensurate with our competitors approaches.

4. Financial Incentives for Industrial Development.

a. Congress must enact a tax cut for industry. Tax reform, aimed at promoting reinvestment, is essential.

b. Congress must approve legislation for Incentive Stock Options (S. 2239). These would provide an incentive to workers to increase their productivity, and a source of capital to their company.

c. Support for Governor King's "social contract" with industry is essential. Particularly, the state must target capital gains tax relief and provide additional funding for the Massachusetts Technology Development Corporation. (This Corporation provides equity capital to fledgling firms with high promise.)

5. New Emphasis on Agriculture and the Fishing Industry:

Agriculture and fishing are two traditional industries that could play an important role in our efforts toward energy independence. Massachusetts, 92% dependent at present on imported food supplies, must face the fact that rising costs of transportation (mostly by trucks) will dramatically increase the cost of food. Thus, an aggressive policy to develop these indigenous Massachusetts resources should be pursued. This will also help to preserve the rural character of small communities, protect them from random development, and enhance the quality of the rural Massachusetts landscape.

a. Fishing and farming policies on the federal level must be structured to assist the small farmer and the independent fisherman. (E.g., FmHA financial and technical assistance programs should have set-asides for the small farmer.)

b. National Marine Fisheries must be funded adequately to support the development of the fishing industry.

c. State tax policy must be restructured to encourage farmland preservation.

d. The $10 million Development Rights Program must be continued and expanded.

e. Local zoning must be structured for the protection of farmlands.

V. ENERGY EFFICIENCY AND URBAN REVITALIZATION

A. Introduction

Suburban sprawl was made possible by inexpensive, abundant energy resources, and encouraged by federal housing and highway policies. Escalating adverse changes in energy supply and price are highlighting the basic energy inefficiencies of suburban sprawl: low-density, energy inefficient residential housing, and automobile dependency for commuting and shopping. The soaring price of new construction in particular will encourage adaption of existing structures to housing and commercial needs.

Economic reality mandates that new residential and commercial/industrial development be concentrated in cities. The economic opportunities will be in older, denser neighborhoods and in city centers. Government programs and policies must now be focused on encouraging the urban revitalization, and on maximizing the inherent energy efficiency of cities. Public funds must leverage private investment into urban areas.

B. Federal programs and policies

1. Develop federal programs and policies to encourage energy efficient development.

a. Enact the Community Energy Act to provide funding to state and local governments for energy conservation and renewable resource activities.

b. Require Executive Agencies to undertake, where appropriate, an energy impact analysis program, including development of a State and Regional A-95 Clearinghouse review process to include evaluation and comments on the energy impact of grant proposals.

c. Adopt strict conservation, land use, and transportation policy requirements as a condition of federal funding to state and local governments.

d. Direct existing housing, community and economic development program funds to promote urban energy conservation and urban revitalization.

(1) Mandate energy efficiency standards and passive solar on all federally assisted housing.

(2) Provide incentive funding for energy efficient housing and weatherization.

(3) Reauthorize and fully fund the Home Mortgage Disclosure Act and continue Community Reinvestment Act activities aimed at increasing financial institution investments in urban communities.

(4) Reauthorize and fully fund Community Development Block Grant, Urban Development Action Grant and assisted housing programs, and provide set-aside and bonus funding to promoting energy conservation.

(5) Provide assistance and incentives for financial institutions to provide mortgage and investment credit for downtown and neighborhood development.

(6) Authorize the National Public Works and Economic Development Act, to provide funding for infrastructure improvements and assistance to businesses expanding or locating in distressed areas.

(7) Enact legislation to permit continued tax exemption of mortgage revenue bonds, with an emphasis on mortgage revenue bond

programs which support community and economic development activities in downtowns and neighborhoods.

(8) Fully fund and support historic preservation programs, with increased emphasis on the use of historic preservation funds through revolving loan pools (e.g., the Architectural Conservation Trust for Massachusetts) and adaptive re-use projects involving energy efficient features.

2. Develop transportation strategies to reduce dependence on the automobile.

a. Develop policies and incentive funding to promote and maximize mass transit use.

b. Provide full funding for Urban Mass Transportation Administration and develop a Mass Transit trust fund.

c. Condition federally assisted housing and industrial development funding on accessibility of projects to mass transit.

C. State programs and policies

1. Develop state programs and administer federal assistance to states to promote energy efficient development.

a. Build capacity to undertake comprehensive energy conservation and renewable resource activities funded through the Community Energy Act.

b. Develop energy efficiency evaluations as part of A-95 State and Regional Planning Agency proposal review process.

c. Provide continued support for state programs which finance business and industrial expansion and development and which finance single and multi-family housing (e.g., Massachusetts Industrial Finance Agency, Massachusetts Housing Finance Agency, and long-term energy residential conservation strategy developed by Governor King and Secretary Matthews).

d. Provide bonus funding and give funding priority to state funded and federally funded activities administered by Massachusetts which comply with state and local energy strategies.

e. Provide recreation areas in central cities. (See Section VI.E.)

2. Develop transportation strategies to reduce single-passenger use of the automobile and overall dependence on the automobile.

a. Reduce or eliminate tolls for car and van pools (e.g., the Massachusetts Turnpike Authority's new fare structure).

b. Provide special lanes for car and van pools.

c. Develop links between mass transit and car and van pools.

d. Reduce insurance for car and van pools and mass transit use.

e. Encourage private industrial/commercial development of state-owned land and air rights adjacent to transit facilities (e.g., Star Market/Massachusetts Turnpike Project in Newton, and Southwest Corridor neighborhood development project in Boston.)

f. Use school buses in non-school hours for special public transportation services, including services for the elderly and the handicapped.

g. Expand water commuting facilities and services (e.g., commuter boat from South Shore to downtown Boston).

h. Give funding priority to road projects which provide access for in-town industrial/commercial development projects (e.g., Crosstown Industrial Park in Boston).

i. Develop publicly owned and feasible privately owned sites for commuter parking.

j. Provide bike racks and bike access on commuter rail, intercity buses and at transit terminals.

D. Local government programs and policies

1. Create or amend programs and policies to encourage energy efficient development.

a. Build capacity for energy conservation and renewable resources planning and activities (Community Energy Act).

b. Use local powers (water, sewer, zoning, building permits) to reduce industrial and commercial development that is dependent on automobile use, and to promote development in town and city centers.

c. Direct federal, state and local funds to activities which are consistent with the local energy plan.

d. Direct capital expenditures to support energy efficient development (e.g., street lights, roadways and other capital improvements to mass transit accessible commercial areas).

e. Implement energy efficient building and zoning codes.

f. Develop a local housing policy which incorporates the following key elements to maximize energy efficient living patterns:

(1) Rehabilitate existing housing stock and make energy conservation improvements (e.g., conversion to elderly housing of the Bugle Buick dealership in Taunton, the Cuticura Soap Factory in Malden, Tabor Mills in New Bedford, and the Academy Building in Fall River).

(2) Adaptively re-use vacant or underutilized commercial and industrial space for housing and mixed used development.

(3) Minimize demolition of existing housing.

(4) Mandate passive solar and energy efficiency standards for all newly constructed housing.

(5) Encourage high density, energy efficient construction models for newly constructed housing, including row housing.

(6) Mandate access to mass transit for all new housing, and use local powers to reduce residential development which is dependent on automobile use.

(7) Remove legal and administrative barriers to residential renewable resource use (e.g., remove zoning code prohibitions against solar collectors on single family housing).

g. Establish partnerships with the private sector to:

(1) Encourage the retention and expansion of existing industry and commerce and develop community investment strategies through formal mechanisms such as "business cabinets" and local development corporations (e.g., JOBS for Fall River, Inc., an umbrella agency created to coordinate local economic development agencies, including the local development corporation, the industrial commission, the industrial development financing authority, the redevelopment authority, and the economic development department).

(2) Maximize use of private resources for development, including technical assistance from educational institutions, revenue bond and mortgage loan pool financing through financial institutions, private financing of publicly assisted projects and technical assistance to local community groups (e.g., Springfield Central, Worcester Cooperative Council, Pride, Inc. of Fitchburg, local development corporations and Small Business Administration 502 programs).

2. Develop transit strategies to reduce dependence on the automobile.

a. Use federal highway funds for development of car free areas of the city (e.g., Downtown Crossing in Boston) and for development of more efficient traffic patterns.

b. Encourage Regional Transportation Agencies to provide linkages between local bus routes and commuter rail.

c. Develop publicly owned and feasible privately owned sites for commuter parking.

E. Private sector programs and policies

1. Work in partnership with the public sector, particularly local governments, to promote energy efficient development and development patterns. Establish partnerships with the public sector to:

a. Encourage the retention and expansion of existing industry and commerce and develop community investment strategies through formal mechanisms such as "business cabinets" and local development corporations.

b. Maximize use of private resources for development, including technical assistance from educational institutions, revenue bond and mortgage loan pool financing through financial institutions, private financing of publicly assisted projects and technical assistance to local community groups (e.g., Springfield Central, Worcester Cooperative Council, Pride, Inc. of Fitchburg, local development corporations and Small Business Administration 502 programs).

2. Develop business policies that reduce employee and customer dependence on automobiles:

a. Make use of flexible work hours.

b. Establish car and van pool programs (e.g., Digital's 74-van program).

c. Provide shower facilities and bicycle racks to promote bicycle commuting.

d. Encourage the use of public transportation for customers through Board of Trade and Merchant Association promotional campaigns.

VI. QUALITY OF LIFE

Stabilization of the Massachusetts economy is contingent upon successful competition for energy non-intensive industries and energy intensive industries that use our indigenous energy supplies. In order to attract such industries, we must also provide an environment that is irresistible to workers and businesses alike. Massachusetts cannot compete with Texas and her energy supply, but the quality of life in Massachusetts will help overcome this disadvantage. We must enhance and better communicate this quality.

A. Historic preservation

Massachusetts is best known for her historic sites, which serve as a magnet for attracting both Massachusetts residents and tourists. The rich history of Massachusetts should be optimized as an economic resource in the following ways:

1. Greater state and local utilization of historic sites as a central focus of the tourist industry.

2. Upkeep and preservation of historic sites with combined local, state, federal, and private funding (e.g., the Roman Candleworks building in New Bedford and the Howe Building in Lowell).

3. Location of small traditional industries in proximity to historic sites (e.g., the crafts industries and Old Sturbridge Village).

B. Arts and culture

As we rely on the quality of life to attract and retain industries and workers, we must begin to reevaluate people's perceptions of art and culture, and the roles that art and culture play in everyday living.

In order to stay ahead of other states, Massachusetts must cultivate an arts and culture movement from the grass roots up. Community arts should become the rule rather than the exception, and can happen in the following ways:

1. Statewide promotion of the arts and of the Commonwealth's rich cultural heritage.

2. Promotion of the arts through local business networks.

3. Art displays in public buildings of the work of local artists.

4. Implementation of the Commonwealth's Arts Lottery, recently signed into law by Governor King.

5. Utilization of local arts councils to coordinate low cost community-based activities such as:

a. Arts festivals focusing on indigenous art forms and cultures.

b. County fairs, exhibits, street fairs, tours and art displays in local firms and educational institutions.

c. Agricultural, industrial, technological or lifestyle-themed events associated with regular community activities.

6. Special recognition by Chambers of Commerce and local arts councils of the ef-

forts of businesses and community-based organizations in promoting the arts.

C. Ethnic diversity

As the first port of entry for many immigrants to this country, Massachusetts has benefitted from wide ethnic diversity. Each ethnic group brought along a wealth of tradition and culture; each contributes to the quality of life in Massachusetts. In recognizing the contribution of each ethnic group, we will begin to live out the covenant for peace that will ensure genuine celebration of ethnic diversity without divisive competition among individual ethnic groups.

We must strive to protect the rich multi-ethnic heritage of Massachusetts by:

1. Community-based heritage celebrations and ethnic arts festivals.
2. Multi-ethnic history presentations in schools, churches, temples, service clubs, etc.
3. Public library story-time series (directed at children) on the history and traditions of various ethnic groups.
4. Holiday celebrations in the tradition of various ethnic groups.
5. Funding ethnic museums and mobile heritage displays.

D. Education

Massachusetts developed the first public education system in the country and remains a leader in academic excellence in higher education. In order to ensure high quality in public elementary and secondary education, and to prepare our children for an increasingly interdependent world, we must insist on:

1. A "back to basics" strategy regarding proficiency in reading, writing, and arithmetic.
2. A second language requirement at the elementary school level in the context of programs to provide global awareness.
3. Courses on energy utilization and conservation beginning at least at the junior high school level.
4. Urban gardenry courses to increase food self-sufficiency.
5. Vocational education programs tailored toward training in energy conservation and renewable resource applications.

E. Recreation

The 1978 Statewide Comprehensive Outdoor Recreation Plan (SCORP) lays the foundation for utilization of our natural resources to enhance the quality of life in Massachusetts. As stated in the Plan, "open space and outdoor recreation are essential to the health and vitality of both individuals and communities." The need to provide outdoor recreation in an increasingly urban state is obvious. Open space and conservation programs to help control unplanned regional growth are essential. There are very direct roles that local, state, and federal governments must play to plan for outdoor recreation and open space services. In addition, the role of private organizations in helping to coordinate recreation activities is fundamental to a statewide plan for land usage.

1. Federal role:

The basic role of the federal government in recreation activities is to provide maintenance and funding assistance through:

a. The Fish and Wildlife Service and the National Park Service (responsible, for example, for the Boston and Minuteman National Parks, the Cape Cod National Seashore, and the Parker River and Great Meadows National Wildlife Refuges).

b. The Heritage Conservation and Recreation Service provides recreation planning and financial assistance for land acquisition, development and rehabilitation through the Land and Water Conservation Fund, and urban park rehabilitation funding through the Urban Park and Recreation Recovery Act.

c. The Army Crops of Engineers (responsible for flood control, and river and harbor maintenance services which support recreational boating and sport fishing activities).

2. State role:

The Commonwealth is the largest landholder of open space acreage in Massachusetts, and thus plays a vital role in providing outdoor recreation opportunities. The state is responsible for:

a. Continuing to provide state funds to cities and towns for open space acquisition and development programs such as Urban Self-Help (e.g., High Rock in Malden) and Heritage State Parks (e.g., Fall River's Battleship Cove, Western Gateway's Hoosac Tunnel Museum in North Adams, Lynn's waterfront projects, and Gardner's crafts programs and tours tied to the old furniture mills—all of which combine open space, historic preservation, and business district revitalization).

b. Natural resource protection through such programs as Wetlands Restrictions and Scenic Rivers.

c. Providing an overall framework through the SCORP planning process for land use, policy determination, and market and research services.

d. Providing technical assistance to conservation and recreation organizations.

3. Local government role:

The role of local government is to:

a. Provide neighborhood and community outdoor recreation services.

b. Protect conservation areas through acquisition, zoning, subdivision ordinances, and other means.

4. Private sector role:

Private sector involvement in recreation services is crucial. The Trustees of Massachusetts and the Massachusetts Audubon Society, for instance, operate landscape, cultural and wildlife areas. In addition, private organizations are responsible for:

a. Construction and operation of such capital-intensive facilities as golf courses, ski areas, campgrounds, and tennis courts.

b. Implementation and support of regional plans for recreation and open space services.

F. The environment

At the same time that we provide wider outdoor recreational opportunities, we must ensure a healthy environment. One of the liabilities of industrial growth is environmental pollution. Just as we in Massachusetts have exhibited leadership in our use of our natural resources for technology, so must we take the lead in protecting the environment from the waste products of technological development.

1. Hazardous waste management:

a. Massachusetts must develop licensed hazardous waste disposal facilities to ensure location of industry inside the Commonwealth.

b. Careful enforcement of the Resource Conservation and Recovery Act is essential to discourage illegal dumping of hazardous waste.

c. Appropriate resource recovery technology located near industry must be developed to obviate the need for landfilling and dumping. (Such technology is already in place in Europe, and in Texas and other states.)

d. The option of landfill sites must remain a last resort, and then only under carefully regulated and supervised conditions.

e. Congress must pass the Environmental Emergency Response Act (S. 1480) to pay for emergency containment of accidental releases of hazardous substances.

2. Rivers:

Major public investments in water quality improvements justify increased efforts to ensure public access to and use of cleaned rivers. We must maximize the use of rivers as complex resource systems.

a. Watershed greenways (management plans) must be developed statewide, using public and private funds, for river protection (e.g., Nashua, Housatonic and Charles Rivers with private dollars, and the North River projects with public dollars).

b. The Massachusetts Departments of Environmental Affairs, Economic Affairs, and Community Development must reach an interagency agreement to develop a model program for state river protection.

c. Regional demonstration programs must be developed to protect land and water resources.

d. Clean-up projects must be promoted to enhance the use of our rivers for swimming, boating, and fishing (e.g., the Malden River beautification project).

3. Air quality:

a. No expansion of coal should be allowed at the expense of environmental standards. (See Section III.B.) We must speed development of second-generation coal technologies (such as fluidized bed combustion) which reduce sulfur and carbon dioxide emissions.

b. Massachusetts must establish vehicle emissions control systems as well as inspection and maintenance programs.

4. Recycling:

a. Encourage local recycling efforts of paper, metals, etc.

b. Pass and implement national bottle bill legislation requiring deposits on returnable beverage containers to eliminate litter and beautify our countryside.

G. Summary

The quality of life in Massachusetts will be the foundation for statewide economic stabilization. Land management, wildlife preservation, academic excellence, cultural diversity, and the historic legacy of leadership are dominant forces in Massachusetts. While energy technology, tax policy, and a skilled work force will provide financial incentives for business development in Massachusetts, the high quality of life will provide the grass roots incentive for community revitalization. With all of the ingredients in place, the energy future of Massachusetts will be secure.

VII. CONCLUSION

This plan, if implemented, should provide a protective barrier against the inevitable future energy shocks that hang over us. That barrier will secure those within our boundaries from all but the most severe disruptions.

This barrier is intended to be interlocking, with each piece valuable in and of itself, but also acting to reinforce all the others. It is a kind of geodesic dome—strengthened by the totality of its components, however small any single component may appear to be.

This barrier, this security, is meant to be more than just comforting and serviceable to our people. It is meant as our chief marketable asset, the very foundation of our long-term economic viability in an increasingly competitive world.

The Massachusetts Plan is my effort to contribute a basis for discussion that will lead to decision-making. The plan obviously is imperfect. It will be modified where modifications are shown to be prudent.

But it remains a challenge to the six million decision-makers in our state: criticize, probe, amend, question.

But do not reject it without offering an alternative.

THE BALKANIZING OF AMERICA

Mr. HELMS. Mr. President, I believe it was Thomas Jefferson who made the remark:

I tremble for my country, when I reflect that God is just.

Likewise, it is the taxpayers of this country who should tremble when politicians and policymakers discover what they like to term a "problem."

Inevitably, they find that the problem can be solved with the expenditure of x million dollars, which the Congress, ever anxious to rid the country of problems, duly appropriates. Thereafter, the problem is no longer just a problem, but a vested interest with a bureaucracy to perpetuate its existence, and a constituency reaping the benefits of its largesse.

Such was the beginning of the food stamps program, a modest proposal in the 1960's to combat malnutrition in Appalachia. Today its budget is $9.7 billion for fiscal year 1980 and $10.8 billion for fiscal year 1981, and it is subsidizing the grocery bills of people in towns and cities and suburbs all over the country. My remarks today, however, are not on the subject of food stamps, but rather they have to do with another little acorn in the fiscal forest that has grown up to be the Office of Bilingual Education and Minority Languages Affairs.

Return with me, Mr. President, to the 1960's, when the American people were having their consciousness raised, as the saying goes, with regard to those who were held to be victims of poverty, prejudice and deprivation. Our people are generous and altruistic by nature, and they appeared willing to go along with programs that experts assured them would alleviate the distress of their fellow citizens. One problem discovered at that time was that youngsters who had difficulties speaking English tended not to do well in their schoolwork. To alleviate this lamentable state of affairs, the Congress in 1968 passed the Bilingual Education Act (title VII of the Elementary and Secondary Education Act), which authorized special activities to provide equal educational opportunity for other-than-English-speaking children.

The first Federal contribution for this program was the modest sum of $7.5 million for fiscal year 1969 to fund some 76 projects. By 1978, title VII programs had grown to include some 565 projects and the bill went up to $160 million. In fiscal year 1979 the tab went up to $200 million; and the following authorizations of appropriations have already been made: $250 million for fiscal year 1980, $300 million for fiscal year 1981, and $400 million for fiscal year 1983. At the present time, there are an estimated 3.6 million school-age children who are classified as limited English speaking, so it is clear that there has been a substantial per capita expenditure over the last 11 years.

Mr. President, I submit that there has to be an easier and wiser way to deal with the language handicaps of schoolchildren than to subsidize the incorporation of some 60 or more languages and dialects into our schools, nationwide. The taxpayers are funding programs of instruction in scores of dialects of American Indian and Pacific Island natives; in Spanish, and in the various languages spoken in the Asian and European countries. The theory behind the present practice is that children should be taught in their native language for a period of years until their English is proficient enough to cope with instruction in English. Other programs double track instruction in English and in the native language of the child. But this is only the beginning.

From a practical standpoint, this often means that there must be a duplication of teachers in the classroom, that additional money must be spent on the training and recruitment and certification of bilingual teachers and instructional aides and that curricula and instructional materials have to be developed in scores of languages other than English. It means that outreach programs have to be developed for the community and for parents of the children involved. It means that the training programs and workshops and seminars and an immense amount of publishing which are part and parcel of the education scene multiply ad infinitum.

This roundabout approach is not only costly and time consuming, but, what concerns me most of all, it may ultimately have unforeseen social consequences that will be distinctly undesirable. It may well be that our well-intended programs will result some decades hence in the Balkanizing of the United States.

This concern is not a curmudgeonly reaction on my part, or the result of a chauvinistic attitude toward the non-English speaking. It was underscored for me by a letter I received from a linguist who has devoted most of his career to the teaching of English as a second language, and who has written extensively on the subject. One of his books, "The Way of Language," was published by Harcourt Brace Jovanovich and is currently a college textbook. The author's name is Fred West, and he presents a very convincing case that we are making a big mistake in pushing for what may turn out to be a multilingual society. In going to extraordinary lengths to postpone an individual's assimilation into an English-speaking society, we are in a sense fostering ethnic differences and a minority-mindedness, if you will, that may come back to haunt us.

Professor West believes that a person's basic loyalty is to his native language. He points to the existence of Miami's Little Havana, where, according to Newsweek magazine, Latin American tourists can escape the English language altogether. This is not a value judgment, but simply a statement of how people behave.

I must stress here that it is not my intention to disparage Spanish, or French, or Samoan or Eskimo or Tagalog or any other tongue, every one of which is a valuable part of the human heritage. What I am questioning is the judgment of those who insist that it is necessary and desirable to use the machinery of government to defer or delay the introduction of American schoolchildren into the mainstream of the cultural life of the United States, the most essential element of which is the English language.

A corollary of the bilingual approach is biculturalism, in which students are indoctrinated—and that is not too strong a word—in the glories of their linguistic homelands. Professor West cites the transformation of New Mexico Highlands University, which was once a small but highly regarded liberal arts university, when it was taken over by militant Chicanos and converted into an institute for the propagation of La Raza, the incendiary doctrine of the Chicano movement which included the declared aim of turning over most of the States comprising the Southwest to Chicano control. The Department of Health, Education, and Welfare evidently found this diversity a wonderful thing, and subsidized it heavily.

I notice, too, that the Office of Bilingual Education and Minority Languages Affairs in the new Department of Education is in the process of widening its sphere of influence to cover a good deal more of the educational spectrum. It has contracted with the National Foundation for the Improvement of Education, in cooperation with the Mexican Ministry of Education, to bring materials on Mexico into 20,000 U.S. classrooms. It is setting up training resource centers, research facilities, instructional programs for parents, vocational training programs and home based programs of instruction—a very ambitious agenda. The irony in all this is that studies of the effectiveness of bilingual education programs show rather indifferent results as far as gains in the reading and math scores of the children involved are concerned.

So, Mr. President, whose interests, I wonder, are being served in this billion-dollar experiment in progressive sociology? The children, I fear, have been lost in the rush as the educational bureaucracy grows and grows and competes with itself to find even more grandiose ways to challenge the cultural and linguistic unity of the country.

Professor West declares that the solution to this anomaly is relatively simple: We should, he contends, end Federal support to bilingual and bicultural programs and return to an infinitely cheaper and infinitely more practical system of teaching English as a language to English-deficient and nonnative schoolchildren, without all the mischievous interference of "biculturalism."

He declares:

> In California, a large number of educators have long argued my same point, that kids learn a foreign language quickly enough, given patient tutoring by specialists in teaching, not in cultural propaganda. A case in point right now: The thousands of Vietnamese refugee children are enjoying no such "bicultural" malarkey; for the most part, they go right into the public school system and quickly learn English. Children do this much better than adults, and without all the traumas that some soft-headed sociologists insist occur to the youngsters. The reason that the Vietnamese do it easily is obvious—motivation. Instead of being propagandized steadily against the American culture and the American language, they are urged by their parents to learn as quickly as possible.

To those who would charge that such a proposal is "cultural genocide," he points out that almost all of us are the descendants of immigrants.

None of my neighbors in North Carolina, he contends, ever broke out in a rash because they were not taught in Scots or Irish or German dialects, nor claimed that they had been robbed of their culture.

One of the staples of Fourth of July oratory used to be the image of this country as the melting pot, which miraculously transformed individuals of many nations and races into a distinctly American type. Most Americans still take a good deal of pride in their ancestral heritage, but in their hearts and souls they identify totally with the United States. The melting pot is not a fashionable symbol these days, because some writers and thinkers prefer to dwell on what was lost. But can there be any doubt that it was far better for all concerned to have become assimilated, to speak a common tongue, to share the same economic and political ideals?

It has often occurred to me that immigrants, and particularly the children of immigrants, are the best Americans we have, the most thankful and devoted, and I think we are denying the validity of two centuries of experience when we take away the motivation or the need that people have traditionally felt to learn English as quickly as possible when they come to live in America.

It is my opinion, Mr. President, that our Government which has struggled along with the English language for 204 years, ought to carry on the country's business in English, and cease acting like a vast engine for the propagation of minority languages. Surely we have enough diversity, enough variety and enough potential sources of harmony and disharmony among our citizens that we do not need to set off the kind of linguistic time bombs such as Canada has today, or to sow seeds of distrust and separatism that will make this a very different America for our children and grandchildren.

MESSAGE FROM THE HOUSE

ENROLLED BILL SIGNED

At 5:49 p.m., a message from the House of Representatives delivered by Mr. Gregory, one of its reading clerks, announced that the Speaker has signed the following enrolled bill:

H.R. 4197. An act to amend the Wool Products Labeling Act of 1939 with respect to recycled wool.

The enrolled bill was subsequently signed by the President pro tempore (Mr. MAGNUSON).

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–3628. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Two Navy Ship Contracts Modified By Public Law 85–804—Status As Of July 29, 1979," April 22, 1980; to the Committee on Armed Services.

EC–3629. A communication from the General Counsel of the Department of Defense, transmitting a draft of proposed legislation to authorize appropriations for construction at certain military installations, and for other purposes; to the Committee on Armed Services.

EC–3630. A communication from the Secretary of Energy, transmitting, pursuant to law, a report concerning actions taken by the Department of Energy, the Department of State, the Department of Justice, and the Federal Trade Commission to carry out the provisions of antitrust defense accorded to oil companies participating in the Voluntary Agreement and Plan of Action to implement the International Energy Program; to the Committee on Energy and Natural Resources.

EC–3631. A communication from the Deputy Assistant Secretary of the Interior, reporting, pursuant to law, the approval of the form of contract to defer payment of the annual construction charge installment due December 15, 1979, for P&C Irrigation Association, Inc., (P&C) near Carey, Idaho; to the Committee on Energy and Natural Resources.

EC–3632. A communication from the Secretary of Transportation, transmitting, pursuant to law, a report entitled "Bicycle Transportation for Energy Conservation," April 1980; to the Committee on Energy and Natural Resources.

EC–3633. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Gasoline Allocation: A Chaotic Program in Need of Overhaul," April 23, 1980; to the Committee on Energy and Natural Resources.

EC–3634. A communication from the Secretary of the Interior, transmitting a draft of proposed legislation to establish the Martin Luther King, Jr. National Historic site in the State of Georgia, and for other purposes; to the Committee on Energy and Natural Resources.

EC–3635. A communication from the Chief, Information Management Staff, Division of Personnel, Tennessee Valley Authority, transmitting, pursuant to law, an attachment to the fiscal year 1979 annual report of the Tennessee Valley Authority listing the names, salaries, and duties of employees of the TVA receiving compensation at the rate of more than $1,500 per year; to the Committee on Environment and Public Works.

EC–3636. A communication from the Chairman and Directors of the Tennessee Valley Authority, transmitting, pursuant to law, the annual report of the Tennessee Valley Authority for fiscal year 1979; to the Committee on Environment and Public Works.

EC–3637. A communication from the Assistant Secretary of the Army (Civil Works), transmitting a draft of proposed legislation to authorize the necessary funds for the completion of certain comprehensive river basin plans for flood control, navigation, and for other purposes; to the Committee on Environment and Public Works.

EC–3638. A communication from the Assistant Secretary of the Army (Civil Works), transmitting, pursuant to law, a final environmental impact statement on the Baltimore harbor and channels project, Maryland and Virginia; to the Committee on Environment and Public Works.

EC–3639. A communication from the Chairman of the United States Nuclear Regulatory Commission, transmitting, pursuant to law, the annual report of the Commission on the administration of the Government in the Sunshine Act for calendar year 1979; to the Committee on Governmental Affairs.

EC–3640. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Productivity Measurement In The Defense Logistics Agency Must Be Supported, Improved, And Used"; to the Committee on Governmental Affairs.

EC–3641. A communication from the Administrator of the General Services Administration, transmitting, pursuant to law, a report on excess and surplus personal property programs under P.L. 94–519, April 1980; to the Committee on Governmental Affairs.

EC–3642. A communication from the Chairman of the National Endowment for the Humanities, transmitting, pursuant to law, a report on the administration of the Freedom of Information Act by the National Endowment for the Humanities for calendar year 1979; to the Committee on the Judiciary.

EC–3643. A communication from the Freedom of Information Officer, United States Environmental Protection Agency, transmitting, pursuant to law, a report on the administration of the Freedom of Information Act by the Environmental Protection Agency for calendar year 1979; to the Committee on the Judiciary.

EC–3644. A communication from the Secretary of Health, Education, and Welfare, transmitting, pursuant to law, the fifth annual report on the Emergency Medical Services Program covering fiscal year 1979; to the Committee on Labor and Human Resources.

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and referred or ordered to lie on the table, as indicated:

POM–697. A joint resolution adopted by the Legislature of the State of Colorado; to the Committee on Agriculture, Nutrition, and Forestry:

"SENATE JOINT RESOLUTION No. 12

"Whereas, The Snow Survey and Water Supply Forecasting Program administered by the USDA Soil Conservation Service has been of tremendous benefit to the state of Colorado; and

"Whereas, This program for the past thirty-five years has provided accurate information to water users, municipalities, farmers, ranchers, and residents of the state of Colorado in general; and

"Whereas, The administration is considering phasing out the federal responsibilities and in particular, the USDA Soil Conservation Service leadership role in this program; and

"Whereas, At a series of public meetings, the citizens have unanimously voiced their support for the continuation of the program in its present form under the leadership of the USDA Soil Conservation Service; now, therefore,

"Be It Resolved by the Senate of the Fifty-second General Assembly of the State of Colorado, the House of Representatives concurring herein:

"That the General Assembly of the State of Colorado go on public record as favoring continuation of the Snow Survey and Water Supply Forecasting Program in its present form with continued leadership being provided by the USDA Soil Conservation Service.

"*Be It Further Resolved*, That the General Assembly advocates the expansion of this important federal program to meet the needs of the states. That copies of this Resolution be forwarded to the United States Secretary of Agriculture, appropriate committees of Congress, and members of the Colorado congressional delegation."

POM–698. A resolution adopted by the Legislature of the State of New York; to the Committee on Commerce, Science, and Transportation:

"LEGISLATIVE RESOLUTION No. 313

"Background. The existing system of Daylight Saving Time is arbitrary and illogical, dividing the year into two different allocations of daylight having no connective relationship to the amount of daylight available. On October twenty-eight, nineteen hundred seventy-nine, the last Sunday in October the sun in the upstate New York area rose at 6:24 A.M. and set at 4:54 P.M. providing 630 minutes of daylight. Under current practice, Daylight Saving Time will resume April twenty-seventh, nineteen hundred eighty, the last Sunday in April at which time the sun will rise at 4:56 A.M. and set at 6:50 P.M., a total of 3 hours and 24 minutes more than on the last Sunday in October.

"This proposed would advance the date for the resumption of Daylight Saving Time to the date which most closely approximates the hours of daylight on the last Sunday in October. The corresponding date would be February thirteenth of this year. On this day there would be 629 minutes of daylight. It is our conclusion that the last Sunday in February would be a far more logical time to begin Daylight Saving Time than under the present system.

"There is strong sentiment for year-round Daylight Saving Time, but a drawback is the darkness in winter for school children and commuters. This proposal eliminates that problem while conserving energy, enhancing the quality of life through recreational pursuits and impacting traffic safety favorably.

"Resolution. This Legislative Body expresses its support for advancing Daylight Saving Time, and that copies of this resolution be transmitted to the President of the United States, the President Pro Tem of the United States Senate, the Speaker of the House of Representatives and the Governor and the Leader in each State Legislature of States within the Eastern Time Zone."

POM–699. A resolution adopted by the House of Representatives of the State of Pennsylvania; to the Committee on Finance:

"HOUSE RESOLUTION No. 214

"Whereas, The President of the United States, Jimmy Carter, proposes, as a part of a multifaceted national attack on inflation, to impose an additional fee of ten cents on all oil imported by the United States; and

"Whereas, Under the same proposed attack on inflation, the current Federal Revenue Sharing Program with the various states is slated for repeal or drastic curtailment, ironically when these same states are being increasingly called upon to enforce and administer more and more Federal laws and regulations with additional financial impairment; and

"Whereas, The average return of Federal money to the Commonwealth is in the area of six cents for every ten cents transmitted to Washington; therefore be it

"Resolved, That the House of Representatives memorializes the Congress of the United States to introduce and adopt legislation which would transfer the President's proposed additional import fee directly to the various states on the basis of their use of oils and fuels or that, in the alternative, the various states be allowed to impose this additional fee instead of so empowering the President; and be it further

"Resolved, That copies of this resolution be transmitted to the Speaker of the United States House of Representatives and to the President pro tempore of the United States Senate and to each member of the Pennsylvania Congressional delegation."

POM–700. A joint resolution adopted by the Legislature of the State of Colorado; to the Committee on Environment and Public Works:

"HOUSE JOINT RESOLUTION No. 1012

"Whereas, The General Assembly recognizes the desirability of protecting the quality of the waters of this state and of assuring that such waters remain suitable for beneficial use; and

"Whereas, The United States Congress enacted the 'Clean Water Act of 1977' and numerous other environmental protection laws; and

"Whereas, The 'Clean Water Act of 1977' and other federal environmental protection laws do not always provide for consideration of the relative costs and benefits of particular actions compelled by such laws; and

"Whereas, The costs of implementing environmental protection laws are ultimately borne by the American public; now, therefore,

"Be it resolved by the House of Representatives of the Fifty-second General Assembly of the State of Colorado, the Senate concurring herein:

"(1) That the Congress of the United States is hereby urged to amend the 'Clean Water Act of 1977' and other federal environmental protection laws to require consideration of the costs and benefits of actions compelled by such laws and to provide reasonable restraints on administrative interpretations of such laws.

"(2) That the Congress of the United States is hereby urged to amend Section 404 of the 'Clean Water Act of 1977' to allow individuals to perform maintenance in stream channels, without a lengthy permit procedure.

"Be it further resolved, That copies of this Resolution be sent to the President of the Senate and the Speaker of the House of Representatives of the Congress of the United States and to each member of Congress from the State of Colorado."

POM–701. A joint resolution adopted by the Legislature of the State of Oklahoma; to the Committee on the Judiciary:

"HOUSE JOINT RESOLUTION No. 1053

"Whereas, the United States Supreme Court has nullified the laws of various states, including Oklahoma's, concerning abortion, and has interpreted the United States Constitution in a way which permits the destruction of unborn human life; and

"Whereas, millions of abortions have been performed in the United States since the abortion decisions of the United States Supreme Court on January 22, 1973; and

"Whereas, the Congress of the United States has not to date proposed, subject to ratification, a right-to-life amendment to the Constitution of the United States; and

"Whereas, the Oklahoma Legislature endorses the concept of the right-to-life for the unborn.

"Now, therefore, be it resolved by the House of Representatives and the Senate of the 2d session of the 37th Oklahoma Legislature:

"Section 1. The Oklahoma Legislature respectfully makes application to the Congress of the United States, pursuant to Article V of the United States Constitution, to call a convention for the sole and exclusive purpose of deliberating, drafting and proposing a right-to-life amendment to the Constitution of the United States, which amendment, pursuant to Article V of the United States Constitution, would then have to be ratified by three-fourths (¾) of the states to take effect.

"Section 2. This application shall constitute a continuing application for such convention pursuant to Article V of the Constitution of the United States until the Legislatures of two-thirds (⅔) of the states shall have made like applications and such convention shall have been called by the Congress of the United States.

"Section 3. The Secretary of State of the State of Oklahoma shall send copies of this Resolution to the President of the Senate of the United States, the Secretary of the Senate of the United States, the Speaker of the House of Representatives of the United States, the Clerk of the House of Representatives of the United States, and to each Member of Congress from the State of Oklahoma and to the presiding officers of the Legislatures in each of the other states attesting the adoption of this Resolution by the Legislature of the State of Oklahoma."

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. BUMPERS, from the Committee on Energy and Natural Resources, with an amendment:

S. 1803. A bill to modify the boundary of the Cibola National Forest in the State of New Mexico, and for other purposes (Rept. No. 96–661).

By Mr. BUMPERS, from the Committee on Energy and Natural Resources, with an amendment and an amendment to the title:

S. 2209. A bill to amend the Federal Land Policy and Management Act (Rept. No. 96–662).

By Mr. BUMPERS, from the Committee on Energy and Natural Resources, with an amendment:

S.J. Res. 119. Joint resolution to authorize the Vietnam Veterans Memorial Fund, Inc., to erect a memorial (Rept. No. 96–663).

H.R. 1967. An act to modify the boundary of the White River National Forest in the State of Colorado (Rept. No. 96–664).

By Mr. BUMPERS, from the Committee on Energy and Natural Resources, with amendments:

H.R. 5926. An act to establish the Biscayne National Park, to improve the administration of the Fort Jefferson National Monument, to enlarge the Valley Forge National Historical Park, and for other purposes (Rept. No. 96–665).

By Mr. CANNON, from the Committee on Commerce, Science, and Transportation, without amendment, but with a preamble:

S. Res. 407. A resolution to express the sense of the Senate that it offer its congratulations to Americans who participated in the second Olympic winter games for the physically handicapped in Gello, Norway.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mrs. KASSEBAUM (for herself, Mr. DOMENICI, Mr. CHILES, Mr. BRADLEY, Mr. BURDICK, Mr. COHEN, Mr. PRYOR, and Mr. HEINZ):

S. 2603. A bill to provide for demonstration programs for the placement of certain elderly persons with foster care families; to the Committee on Labor and Human Resources.

By Mr. DECONCINI (by request):

S. 2604. A bill to amend provisions of law concerned with Indian health care; to the Select Committee on Indian Affairs.

By Mr. PRESSLER:

S. 2605. A bill to amend title 18 of the United States Code with respect to the bribery provisions; to the Committee on the Judiciary.

By Mr. GARN:

S. 2606. A bill to establish an Office of Strategic Trade, to transfer the functions of the Secretary of Commerce under the Export Administration Act of 1979 to the Office of

Strategic Trade, and for other purposes; to the Committee on Governmental Affairs.

By Mr. BAYH:

S. 2607. A bill to provide, in addition to any other remedies available under the laws of the United States, a judicial remedy and procedure for domestic businesses injured by unfair competition from foreign competitors in sales of merchandise within the United States; to the Committee on the Judiciary.

S. 2608. A bill to improve economy and reduce inefficiency in government and to alleviate the paperwork burdens of individuals, small businesses, and small organizations; to the Committee on Governmental Affairs.

By Mr. HEINZ:

S. 2609. A bill to amend the Solid Waste Disposal Act (P.L. 94-480), as amended; to the Committee on Environment and Public Works.

By Mr. DURENBERGER:

S. 2610. A bill to amend the Internal Revenue Code of 1954 to increase the investment tax credit for commuter highway vehicles to 20 percent, and for other purposes; to the Committee on Finance.

S. 2611. A bill to amend the Internal Revenue Code of 1954 to exclude from gross income certain amounts received in connection with the provision of alternative commuter transportation, and for other purposes; to the Committee on Finance.

By Mr. PERCY (for himself, Mr. McGOVERN, Mr. BOSCHWITZ, and Mr. CULVER):

S. 2612. A bill to regulate the feeding of garbage to swine; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. PERCY:

S. 2613. A bill to ensure the development and implementation of policies and procedures to encourage interagency cooperation in the efficient and effective use of Federal medical resources, and for other purposes; to the Committee on Governmental Affairs.

By Mr. PRYOR:

S.J. Res. 167. Joint resolution designating May 15, 1980 as "National Nursing Home Residents Day"; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mrs. KASSEBAUM (for herself, Mr. DOMENICI, Mr. CHILES, Mr. BRADLEY, Mr. BURDICK, Mr. COHEN, Mr. PRYOR, and Mr. HEINZ):

S. 2603. A bill to provide for demonstration programs for the placement of certain elderly persons with foster care families; to the Committee on Labor and Human Resources.

FAMILY CARE DEMONSTRATION PROJECT ACT

● Mrs. KASSEBAUM. Mr. President, as we all know, older Americans are disproportionately affected by chronic conditions which limit mobility necessary for unassisted day-to-day life. While these functional disabilities make it necessary for individuals to obtain some assistance with routine activities, they do not prevent an older person from taking care of some of his or her own needs. In far too many cases, our response has been to assign such individuals to nursing homes—even though they do not require the level of care offered in these institutions.

Unfortunately, this response is reinforced by Federal policies which offer generous support for institutional care but frequently neglect alternative arrangements. Continued reliance on these policies ignores both future cost implications and the preferences of a rapidly growing older population. While the need for nursing homes and other institutions will always exist, we must make a greater commitment to expanding the availability of long term care alternatives to individuals who are able to take advantage of them and wish to do so.

The bill I am introducing today—the Family Care Demonstration Project Act—authorizes the establishment of demonstration projects to determine the viability of efforts to place qualified older persons in private homes in cases where institutional placement would otherwise be unavoidable. I am extremely pleased that Senator CHILES, chairman of the Senate Special Committee on Aging, Senator DOMENICI, ranking minority member, and several other of my colleagues on the committee—Senators BRADLEY, BURDICK, COHEN, HEINZ, and PRYOR—have joined in cosponsoring this measure.

Studies have shown that one of the most significant variables which determine whether or not an impaired older person will live in the community or in a nursing home is the availability of another caring individual—generally a close family member. Although the level of family support for older relatives in our country is quite high, an estimated 10 to 18 percent of our institutionalized elderly could remain in the community if they were able to obtain some assistance with daily activities. These individuals are the focus of my proposal.

Under this program, qualified older people would be placed with families who agree to assume caretaking responsibilities. These families will be compensated for the services they provide. The amount of compensation will be based on criteria established by the Secretary of Health and Human Services. The compensation is intended to make home care possible—not profitable. The older participant will contribute to the cost of his or her care to the extent possible; however, each person will be allowed to retain sufficient funds to meet personal needs. In cases where the older person's contribution falls short of the level of compensation established for the family, the Secretary is authorized to use medicare or medicaid funds to pay the difference.

Caretakers will include both foster families and blood relatives of the older participant. Although many of the older individuals eligible to participate in the program will not have relatives who are able to assume responsibility for their care, assistance for caretaking relatives is an important feature of the program.

Given the financial pressures facing so many families today, there are no doubt numerous situations in which a family would like to bring an older member into their home but simply cannot afford to do so. Public assistance is often available only if the older relative enters a nursing home, and so nursing home placement often becomes the only choice for the financially strapped family. The magnitude of this problem is difficult to assess. It is my hope that the demonstration projects called for in this bill can add to our knowledge of the extent to which limited financial assistance would affect family decisions regarding the living arrangements of older members.

My bill contains several safeguards which I feel are essential to the proper functioning of a program of this nature. For example, no placement may be made without the consent of the older person, and he or she may choose to discontinue the arrangement at any time. Project sponsors must see that the older participants are receiving appropriate care by assuring that training, support, medical liaison, and periodic monitoring are provided. Caretaker families will be limited in the number of older participants they may have in their care and must make adequate provisions for the comfort and mobility of the older persons.

An indication of the potential for this type of program is provided by adult foster care programs now operating in some States. I have been particularly impressed by the program operated by Massachusetts General Hospital. Initiated 2 years ago, this program placed 36 individuals in foster homes during the past year. Of this number, 23 individuals have remained in the program. Evaluations conducted in conjunction with the program have demonstrated that individuals placed with families have made noticeable improvements in their health and overall well-being. Caretakers and older participants have indicated satisfaction with the program, which has become increasingly popular.

The program has also demonstrated great cost-savings potential. Initially, the total cost of the Massachusetts General program has slightly exceeded the cost of comparable nursing home care. However, current staff is able to support additional participants. As participation grows, program costs will fall below that of nursing home care. Participation in the program doubled during the last 6 months of 1979 and is expected to double again during this year. Johns Hopkins is sponsoring a similar program in cooperation with Massachusetts General.

Several other States have initiated programs and studies which deal with some form of the family care concept. One survey of these efforts notes that—

While adult foster care is an existing national occurrence, it presents the paradox of being relatively invisible.

For the most part, foster care programs have been independently developed and there has been little opportunity for an exchange of information and ideas. What works and what does not is a discovery that each program has had to make for itself. For this reason, my bill includes a provision directing the Department of Health and Human Services to establish an information clearinghouse on existing foster care programs around the Nation. The exchange of information made possible through this clearinghouse would be extremely beneficial to organizations conducting this type of program as well as those which are considering doing so.

The findings of these demonstration projects will be reported in a study man-

dated in the bill. This study will include an evaluation of the cost effectiveness of family care; the effect of the program on the health status and attitudes of older participants; the feasibility of expanding the program; and other factors which should be taken into account in developing programs of this nature. In addition, because these projects are to be conducted in both urban and rural settings, it will be possible to compare the program outcomes in various parts of the country.

As the elderly grow both in numbers and as a proportion of our population, there will be an increasing need to find alternatives to the expensive institutional solutions upon which we have relied in the past. The type of program I am proposing cannot meet all of the long-term care needs we face today and will be facing in the future. However, I believe it does have great potential for meeting the needs of a significant number of individuals and should be considered as an additional option in a range of noninstitutional long-term care alternatives.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2603

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Family Care Demonstration Project Act".

SEC. 2. (a) The Secretary of Health and Human Services (hereinafter in this Act referred to as the "Secretary"), in consultation with the Commissioner of the Administration on Aging, may make a grant to, and enter into a contract with, any public or private entity, including any hospital that has an agreement in effect under section 1866 of the Social Security Act, for the purpose of conducting demonstration programs for the placement of elderly persons in private homes as foster care residents. Elderly persons placed in foster care homes under this Act shall be individuals who—

(1) are 65 years old or older;

(2) are inpatients in a hospital or nursing home but no longer require inpatient care;

(3) are ambulatory and require continued medical support services or intermittent medical or skilled nursing care similar to the care provided in an intermediate care facility, but who do not require continuous skilled nursing services; and

(3) lack other appropriate residential arrangements to which they may be discharged and in which the services needed will be provided.

(b)(1) No grant or contract may be made under this section unless an application therefor has been submitted to, and approved by, the Secretary. Such an application shall be in such form and be submitted in such manner as the Secretary shall by regulation prescribe. Such application shall provide assurances satisfactory to the Secretary that the applicant will make such reports and provide such other information respecting the grant or contract as the Secretary may require.

(2) The Secretary may not approve an application for a grant or contract under this section for a demonstration program unless the application contains a full description of the program and provides assurances, satisfactory to the Secretary, that the program will be conducted as follows:

(A) The program establishes criteria, consistent with subsection (a), for the selection of persons who will be placed in foster care under the program.

(B) The program establishes standards for the families and homes in which persons will be placed under the program, including standards to assure that—

(i) an excessive number of elderly persons are not placed with any one foster care home;

(ii) members of such foster care family are in good health and are capable of providing elderly persons placed with the family with adequate care and services;

(iii) each such foster care family lives in and maintains the home in which the persons are placed at all times;

(iv) each such foster care home provides adequate heat and hot water, telephone service, and handrails and other devices needed for the safety and mobility of such persons, and meets such other appropriate standards of physical condition, including appropriate fire, health, and safety standards, as the Secretary may prescribe by regulation;

(v) each such foster care home is accessible to medical facilities in which such persons have received treatment and may continue to receive treatment and is accessible to public transportation;

(vi) each such foster care family is not totally dependent for financial support on the income contributed by or on behalf of the elderly persons placed in the home; and

(vii) members of such foster care family have received appropriate training with respect to the care and condition of the elderly persons placed with such family, including the identification of local medical facilities that will assist in meeting the medical needs of such persons.

(C) The program provides for appropriate methods for the selection of elderly persons placed in foster care and the selection of the foster care home in which each elderly person will be placed, and such program specifically provides that no person will be placed in a home or remain in a home with a family without the consent of such person.

(D) The program provides for the placement of elderly persons under the program in the homes of blood relatives whenever possible if the home of such relatives meets the applicable requirements of this Act. The program shall include placements in homes of relatives and placements in other foster care homes so that an evaluation of the care in both settings may be made.

(E) The program provides that before an elderly person is placed with a home under the program—

(i) the institution from which such person is being discharged shall identify in writing the medical, nursing, dietary, and social needs of such elderly person;

(ii) the program must identify how such needs will be met in the foster care home; and

(iii) the elderly person and the family in whose home such person is placed are each provided copies of such statements.

(F) The program provides (directly or through appropriate arrangements) for—

(i) assuring the twenty-four-hour-a-day availability of medical support services to elderly persons placed in homes under the program;

(ii) assuring the provision of other appropriate support services to such persons; and

(iii) the regular monitoring (not less often than monthly) of the condition of such persons in the homes.

(G) The program provides for—

(i) a medical liaison team to serve as a liaison between local medical facilities and the elderly persons participating in the program, in order to insure that appropriate medical information is provided between—

(I) the medical facilities, physicians, and other medical personnel caring for an elderly person under the program, and

(II) the elderly person and the family caring for such person;

(ii) such medical liaison team to be accessible by telephone during working hours and to be on-call at other hours; and

(iii) each elderly person placed in a home to be visited by a liaison team within three days of the date of the placement in such home and monthly thereafter.

(H) The program does not duplicate, and makes efficient use of, existing home health care and other support services and other programs providing health care to elderly persons in homes.

(I) The program provides for appropriate methods for evaluating the cost-effectiveness of the program and the quality of care and services provided to persons placed in homes under the program.

(J) The program provides that the elderly person placed in a home contributes to the cost of needed care to the extent such person can do so without unduly depleting such person's resources, the criteria for such contribution to be determined by the Secretary.

(K) The program assures that the persons in whose home an elderly person receives foster care under the program are compensated in accordance with regulations prescribed by the Secretary under subsection (h).

(L) The program provides that the members of the family providing foster care are assisted in making arrangements for the care of an elderly person placed in the home of such family when circumstances require that alternative short-term care is necessary.

(c)(1) In reviewing and approving applications for grants and contracts under this section, the Secretary shall, to the extent feasible, provide for the distribution of such grants or contracts among urban and rural areas.

(2) The Secretary shall determine the amount of any grant or contract made under this section. Payments under such grants and contracts may be made in advance on the basis of estimates or by way of reimbursement, with necessary adjustments on account of underpayments or overpayments, and in such installments and on such terms and conditions as the Secretary finds necessary to carry out the purposes of such grants and contracts.

(d)(1) Each recipient of a grant or contract under this section shall keep such records as the Secretary shall prescribe, including records that fully disclose the amount and disposition by such recipient of the proceeds of such grant or contract, the total cost of the undertaking in connection with which such grant or contract was made, the amount of the portion of the cost of the undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(2) The Secretary and the Comptroller General of the United States, or their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, and records of the recipient of grants or contracts under this section that are pertinent to such grants or contracts.

(e) The Secretary may provide technical assistance to appropriate entities with respect to programs assisted under this section.

(f) The Secretary shall establish an information clearinghouse regarding foster care programs available in the United States.

(g) The Secretary shall evaluate the demonstration programs supported under this section and shall submit to the Congress,

not later than January 1, 1984, a report including—

(1) the results of such demonstration programs;

(2) the Secretary's evaluation of such programs, including the cost-effectiveness of such programs, the quality of care provided under such programs, and the effect of different geographic settings on the results of such programs, particularly in comparison with care provided to elderly persons in intermediate care facilities; and

(3) any recommendations the Secretary may have with respect to the extension or modification of the authority provided under this section.

(h)(1) The Secretary shall prescribe regulations relating to the compensation to be received by persons in whose home an elderly person receives foster care under the program.

(2) In carrying out the demonstration programs under this Act the Secretary is authorized to make foster care maintenance payments on behalf of elderly persons who are eligible individuals under part A of title XVIII of the Social Security Act from the Federal Hospital Insurance Trust Fund.

(3) In carrying out the demonstration programs under this Act the Secretary is authorized to make payments to States under title XIX of the Social Security Act with respect to amounts expended by such State for foster care maintenance payments to elderly persons who are otherwise eligible for medical assistance under the State's plan approved under such title XIX.

(4) In determining the amount of any payment to be made under this subsection, the Secretary shall determine the reasonable amount for such foster care maintenance payments, and shall determine the portion of such reasonable amount which will be taken into account for payment purposes, based upon such factors as may be relevant to the demonstration program, including the individual's ability to pay for the foster care, the duration or quality of the foster care, and the degree to which the individual would otherwise require institutional care.

(5) Any foster care provided to an individual under a demonstration program funded in whole or in part under this Act shall not be taken into consideration in determining the eligibility for, or the amount of, supplemental security income benefits payable under title XVI of the Social Security Act, or State payments payable under section 1616 of such Act or under section 212 of Public Law 93-66, with respect to such individual.

(i)(1) There are authorized to be appropriated for grants and contracts under this section $1,500,000 for the fiscal year ending September 30, 1981, $1,500,000 for the fiscal year ending September 30, 1982, and $1,500,000 for the fiscal year ending September 30, 1983.

(2) Funds appropriated under this subsection shall be available for the costs of such demonstration programs, including payments to persons in whose home an elderly person receives foster care under the program for providing such care. Such funds shall be so available with regard to any elderly person participating in the program, including elderly persons for whom the payments under subsection (h), if any, and the contribution of such elderly person to such care, if any, do not adequately compensate the persons in whose home such elderly person receives foster care.●

By Mr. DECONCINI (by request):

S. 2604. A bill to amend provisions of law concerned with Indian health care; to the Select Committee on Indian Affairs.

● Mr. DECONCINI. Mr. President, I am introducing a bill, at the request of the administration, that would authorize appropriations under the Indian Health Care Improvement Act for fiscal years 1981 through 1984.

The bill would authorize the continuation of several important Indian health programs. These programs—the recruitment and training of Indian health professionals, the provision of health services, the construction and renovation of Indian Health Service facilities, and the provision of contract services for urban Indians—are a vital part of the Federal Government's efforts "to meet the national goal of providing the highest possible health status to Indians," as stated in the Indian Health Care Improvement Act.

The Senate Select Committee on Indian Affairs has conducted hearings in Arizona, Montana, and Washington, D.C.—all dealing with Indian health issues. As a result of these hearings, I am convinced that more than passing attention must be given to the reauthorization of this act. The proposals contained in this bill should be scrutinized and modified by the committee so the legislation will assure Indians that, indeed, the Congress intends to keep its commitment made in 1976—"of providing the highest possible health status to Indians." I look forward to working with Chairman MELCHER as the committee considers extending this important legislation.

Mr. President, I ask unanimous consent that the bill be printed in the RECORD at this point.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2604

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE AND REFERENCES IN ACT

SECTION 1. (a) This Act may be cited as the "Indian Health Care Amendments of 1980".

(b) Whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Indian Health Care Improvement Act, unless otherwise specifically stated.

INDIAN HEALTH MANPOWER

SEC. 2. (a)(1) Title I is amended by adding at the end thereof the following:

"APPROPRIATION AUTHORIZATIONS

"SEC. 107. For purposes of carrying out sections 102, 103, 105, and 106 there are authorized to be appropriated $3,200,000 for fiscal year 1981 and such sums as may be necessary for the three succeeding fiscal years.".

(2) Sections 102(c), 103(d), 105(d), and 106(b) are each amended by striking out the last sentence.

(b) The first sentence of section 757(a) of the Public Health Service Act is amended by striking out "and for each of the succeeding four fiscal years such sums as may be specifically authorized by an Act enacted after the date of enactment of this section" and inserting instead "$3,600,000 for the fiscal year ending September 30, 1981, and such sums as may be necessary for the three succeeding years".

INDIAN HEALTH SERVICES

SEC. 3. (a)(1) Title II is amended by adding at the end thereof the following section:

"RURAL HEALTH PROJECTS

"SEC. 202. The Secretary may provide support for not more than two pilot projects providing outreach services to eligible Indians residing in rural communities near Indian reservations.".

(2) Section 508 is repealed.

(b)(1) Title II is further amended by adding after section 202 the following section:

"APPROPRIATION AUTHORIZATIONS

"SEC. 203. For purposes of carrying out this title there are authorized to be appropriated $30,900,000 for fiscal year 1981 and such sums as may be necessary for the three succeeding fiscal years.".

(2)(A) The first sentence of section 201(a) is amended by striking out "subsection (c)" and inserting instead "this title".

(B) The second sentence of section 201(a) is amended by striking out "section" and inserting instead "title".

(C) Section 201(b) is amended by striking out everything after "seven-fiscal-year period" the first place it occurs and inserting instead a period.

(D) Section 201(c)(7) is repealed.

INDIAN HEALTH FACILITIES

SEC. 4. (a)(1) Section 301 is amended by adding at the end the following subsection:

"(d) For purposes of carrying out this section, there are authorized to be appropriated $26,500,000 for fiscal year 1981 and such sums as may be necessary for the three succeeding fiscal years.".

(2)(A) Section 301(a) is amended by inserting "or (d)" after "subsection (b)".

(B) Paragraphs (1) through (3) of section 301(b) are each amended by striking out the last sentence.

(b) The last sentence of section 302(b) is amended by striking out "specifically authorized in an Act enacted after this Act" and inserting instead "necessary".

UBRAN INDIAN HEALTH SERVICES

SEC. 5. Section 506 is amended—

(1) by striking out "and" after "1979,", and

(2) by inserting ", $8,000,000 for fiscal year 1981, and such sums as may be necessary for the three succeeding fiscal years" after "1980".●

By Mr. PRESSLER:

S. 2605. A bill to amend title 18 of the United States Code with respect to the bribery provisions; to the Committee on the Judiciary.

● Mr. PRESSLER. Mr. President, today I am introducing legislation which increases the penalties for Members of Congress convicted of bribery in conjunction with their official duties.

While I harbor no illusions that such changes in our Criminal Code will root out all official evil, Mr. President, I would hope that such legislation will serve as a vehicle for consideration of this subject.

The tough fact is that it is as difficult to eliminate corruption in Congress as it is in society generally. Perhaps the bottom line of all this is realizing that Congress is truly a reflection of the American people. Congress is made up of men and women from all walks of life and many nationalities and religious origins. There is corruption in every field of work. There should not be but there is. I do not believe we should accept this situation, however, without a fight. We must expose corruption wherever it is and do our best every day to combat it.

In reality, the overwhelming majority of the men and women in Congress are extremely hard working and honest.

Many sacrifice lucrative careers in the private sector and frequently are deprived of time from their families because of devotion to public affairs. In recent years with the workload ever increasing and public esteem ever decreasing, a number of those dedicated officials have decided not to seek reelection. The loss of these experienced people will be felt by the Nation.

This being said, the public is entitled to see quick action taken against wrongdoers. Members of Congress must not be allowed to get away with bribery. Already evidence is being presented to grand juries by law enforcement authorities regarding the ABSCAM matter.

The public also rightfully demands that Congress itself take measures to police itself. The Constitution gives Congress alone the power to expel Members. The present criminal investigation by the Department of Justice, however, places Congressional Ethics Committees in a difficult position. Unless they wish to jeopardize the evidence gathered against Congressmen by the law enforcement authorities in the executive branch, the committees must wait to receive this material after possible grand jury action and/or trials have been completed. This could take 6 months to a year.

The difficulty is that most reforms seem to go to the symptoms of crime; they do not touch on the cause. Others have suggested that terms of office be limited, for example six terms for the House and two terms for the Senate. However, in looking at some of the scandals of recent years, including ABSCAM, many of those mentioned have only been in Congress a relatively short time. It is not necessarily the case that seniority corrupts. The last round of anticorruption legislation following Watergate has not been the answer. The reforms on reporting and disclosure have in many cases only added to costs, burdens, and paperwork of being a Member of Congress. And perversely, these regulations have discouraged some able people from running for Congress.

The present situation is further muddled, however, by the emergence of several separate but not unrelated difficult issues.

Inquiry is already centering on the methods used by law enforcement agencies. Simply because the techniques employed are similar to those used against hoods and petty thieves does not mean they are inappropriate to snare Congressmen. In previous undercover sting operations, however, agents investigated crimes which had already occurred, rather than creating the circumstances under which they might occur. Several legal experts have suggested that the latter technique may be in violation of constitutional guarantees, thus possibly barring a criminal conviction.

The politicians involved in the ABSCAM sting have not yet been indicted, let alone tried. Like other citizens they are to be presumed innocent until proven otherwise. It should be noted, however, that elected officials suffer greater damage to their careers than other individuals, by mere implication in illegal activities, even should they be acquitted. This leads to the next point.

The wholesale leaks from the Government are unprecedented. Evidence gathered during criminal investigations is normally closely guarded and not disclosed before trial. In this present situation, great detail was somehow released before grand jury action and received wide media attention. Inquiry should be made as to how this came about and why.

After the facts of the present investigation have been sifted, Congress must renew its determination to set its houses in order.

Whether or not criminal convictions result, Congress has the power to discipline its Members and to revise the criminal statutes. Examples of penalties for wrongdoing imposed in other democracies should be studied for possible application in our country. Japan, for example, requires the automatic loss of membership for a member of the Diet convicted of certain offenses. The Netherlands provides that penalties for offenses be increased by one-third if committed by members of parliament.

After appropriate judicial action is taken in the immediate crisis, Congress must address itself again to strengthening its standards of rectitude and improving its internal institutions and processes chiefly through actions of its Ethics Committees and possible revisions of present statutes. We must restore the public's faith that the Nation's business is being conducted honestly.●

By Mr. GARN:

S. 2606. A bill to establish an Office of Strategic Trade, to transfer the functions of the Secretary of Commerce under the Export Administration Act of 1979 to the Office of Strategic Trade, and for other purposes; to the Committee on Governmental Affairs.

OFFICE OF STRATEGIC TRADE ACT OF 1980

● Mr. GARN. Mr. President, I am today introducing legislation to reorganize and consolidate export control responsibilities in Government. As the ranking minority member of the Banking Committee, which has jurisdiction over the Export Administration Act, I have become increasingly concerned with the failure of the executive branch to prevent the flow of strategic technology to adversary countries. Congress has heard repeated testimony from expert witnesses, both from within and outside of Government, that the fragile technological lead which we enjoy over the Soviet Union is shrinking.

What remains of our once vaunted military superiority, on which our national security increasingly depends, is in part being whittled away through a wide variety of technology transfer mechanisms. It is well documented that technology which the Soviet Union cannot develop, will be bought from the West, and technology which the Soviets cannot buy will be stolen.

Furthermore, considerable amounts of dual-use technology sold to the Soviet Union and its satellites for peaceful purposes have been systematically diverted to the Soviet military. Vehicles built at the United States designed and financed Kama River truck plant in the Soviet Union are continuing to be used to support the brutal subjugation of Afghanistan. Missile launchers and armored personnel carriers from the Soviet Union's ZIL truck complex—which has also received U.S. computers and machine tools—are not only utilized by the Soviet military, but are sent to their allies throughout the world, including Cuba, South Yemen, and Syria.

Various agencies of the Federal Government are charged with the responsibility of regulating the flow of strategic trade with adversary nations to insure that equipment and know-how is not improperly used once it has been sold to them. The practices and procedures by which such trade is regulated have been repeatedly criticized by the General Accounting Office, and even by some of the agencies which participate in the export licensing system, such as the Department of Defense.

The fact of the matter is that in recent years, the Commerce Department, which has the lead responsibility in export licensing, has failed to protect adequately the national security of the United States—frequently allowing its strong export promotion bias to overwhelm its national security responsibilities. Even today the Commerce Department is unclear, with respect to DOD's recommendations to revoke licenses for the shipment of spare parts of the ZIL complex and other Soviet facilities known to produce military equipment.

Mr. President, the present export licensing system does not serve anyone well. The business community is frustrated by a lack of clear policy guidance and confused by a licensing system which involves several agencies, each with its own priorities. All to often a simple request to export becomes trapped in interagency rivalry and bureaucratic procedures that take months to resolve.

The taxpayer is frustrated because he is paying the price for a cumbersome bureaucracy which does not give him his money's worth. In addition, to the extent that the Commerce Department, in its desire to increase U.S. exports, fails to weigh adequately the national security implications of any particular sale, then our own defense costs must increase in future years as we strive to overcome such licensing errors.

A striking example of the costs all of us will have to pay can be seen in the sale of the Centalign-B miniature ball bearing grinder machines to the Soviet Union. The sale of these machines was denied to the Soviets for approximately 11 years, on the grounds that ball bearings produced by the Centalign-B would have a vast military potential. However, during the early seventies, the sale of 164 of these machines was approved.

According to the Defense Department, the ball bearings produced by the Centalign-B machines may be used by the Soviets in many military applications where precision inertial guidance is crucial, such as MIRV technology, antiballistic missile defense, cruise missiles, air-to-air missiles and ship navigation system.

The heart of the problem is the fact

that responsibility for regulating strategic trade is dispersed throughout the executive branch. Although the Commerce Department's Office of Export Administration (OEA) has primary authority, other agencies, among them the Department of Defense, Department of State, the Department of Energy, have overlapping and sometimes conflicting responsibilities. In addition, the OEA has been treated as an unwanted stepchild by the Commerce Department. Over the past few years, the OEA has been deprived of the resources to do its job, and its dedicated staff have been subjected to bureaucratic harassment from above, as noted in a recent report by the Office of the Special Counsel, of the Merit Systems Protection Board.

The GAO has recommended consolidation of export licensing functions within a single agency. My legislation would accomplish this by establishing an independent Office of Strategic Trade, which would maintain the commodity control list (CCL), now administered by the Commerce Department. Other agencies in Government, however, would still be part of this streamlined decisionmaking process. The Office of Strategic Trade or OST would receive the initial application for the license to export, and distribute that request to other agencies for their consideration and review. The other agencies would continue to have full participation in the review process.

As provided in the 1979 amendments to the Export Administration Act, however, the Department of Defense could not be overridden in the review process. Were the OST to approve a license application over the objection of the Secretary of Defense, the question would then go to the President for resolution.

The OST would also receive explicit statutory authority to participate in the deliberations of the coordinating committee for multilateral export controls (CoCom), which consists of the NATO countries (minus Iceland, plus Japan). Presently these negotiations are handled by the State Department, but OST representation is also essential if American businessmen are not to be disadvantaged by our efforts to obtain the cooperation of our allies in the control process. This would be essential if the sanctions recently announced by President Carter, against the Soviet Union, are to be implemented effectively.

The OST would also assume responsibility for enforcement of the munitions list, currently administered by the State Department, which regulates the flow of purely military technology to other nations. The OST would therefore administer the full range of technologies contained on the munitions list, as well as the commodity control list, so that duplication between the lists could be gradually eliminated.

Finally, the establishment of the OST will allow the U.S. Government to upgrade its compliance efforts, which was strongly recommended by the GAO. Once a decision has been made on the basis of national security, human rights or other grounds not to sell a particular technology to a particular country, all U.S. companies and their overseas subsidiaries must abide by that decision. Otherwise both our allies and adversaries will continue to doubt our resolve in these matters. The OST would therefore assume responsibility for the physical inspection of cargoes—now performed by the Commerce Department, and in some instances by the Treasury Department's U.S. Customs Service.

Mr. President, let me say that I recognize the fact that last year Congress allowed a reorganization plan to take effect, which established a new Department of Commerce and Trade. Congress also passed the new Export Administration Act of 1979. But I must emphasize that these were only preliminary steps in the right direction. My legislation does not affect the streamlining of licensing procedures contained in the Export Administration Act of 1979. What it does, is to remove the Office of Export Administration from the Commerce Department and establish it as an independent entity within the executive branch, and thereby ease the implementation of the Export Administration Act of 1979.

There have been suggestions that OEA be placed in the Department of Defense, if national security concerns need to be emphasized. I considered this approach, but rejected it for the simple reason that the OEA could become too heavily influenced by the specific focus of the DOD, as today it is by that of the Commerce Department, with its export promotion bias. International trade is a high stakes game for the United States, and one which we cannot afford to lose. For this reason, the OST must remain independent, and capable of implementing export control policy as intended by Congress and the President, so that this policy can not be undermined, as it has been in the past.

In conclusion, Mr. President, let me say that I have always been committed to the principle of free trade. In addition, I have always believed that when it comes to government, "less is better" and that overextended and overlapping bureaucracies are only a hindrance to effective, efficient government. I believe the legislation I have introduced today will bring order out of the chaos that now characterizes the efforts of the executive branch to protect U.S. interests in matters of strategic trade.

In a recent article appearing in the Wall Street Journal, entitled "Russian Know-How," it was stated that:

> As competition overshadows cooperation (between the U.S. and the Soviet Union) one battleground emerges as critical. It is technology. How the U.S. and the Soviet Union fare in economics, defense and even world prestige in the future will depend increasingly on their scientific and industrial innovation.

Now as a result of the blatant Soviet invasion of Afghanistan, President Carter has announced the completion of a review, whose guidelines will govern the nature of our trading relationship with the Soviet Union and its satellites.

Mr. President, I am not satisfied that the new set of guidelines will be that much more effective than the old guidelines were in controlling the flow of national security sensitive technology and commodities to the Soviet Union—nor am I satisfied that the Commerce Department can be relied upon to administer the new guidelines properly, if only because their track record in these matters is so deficient. One need only to look at the expert testimony before Congress, of the past years on the subject of strategic trade, to see that U.S. national security interests have been persistently disregarded by the Commerce Department, in the name of export promotion.

Legislation has been introduced which would place a total trade embargo on the Soviet Union, until their combat troops and support units are withdrawn from Afghanistan. This is strong medicine, but perhaps necessary.

I do wish to emphasize, however, that over the past 10 years, various administrations have attempted to use trade policy to lure the Soviet Union into new cooperation in international relations, and that during the period of détente, this country came too close to throwing caution to the winds, in the area of strategic East-West trade. It is time to stop and take a look at where we have been and where we are going. The legislation I have introduced will establish a mechanism by which normal and peaceful trade with all countries of the world can be conducted, and through which the security of this country will be in no way diminished.

Mr. President, I ask unanimous consent that the text of the bill and the section-by-section analysis be printed in the RECORD, as well as a recent article appearing in Newsweek, which provides an excellent analysis on how the Western Nations "are funding two defense budgets—their own and the Kremlin's."

There being no objection, the bill and material were ordered to be printed in the RECORD, as follows:

S. 2606

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Office of Strategic Trade Act of 1980".

STATEMENT OF PURPOSE

SEC. 2. The Congress finds and declares that:

(1) The failure to control the transfer of national security sensitive technology and commodities to the Soviet Union and other countries which are subject to export controls for reasons of national security or foreign policy, has led to the significant improvement of Soviet bloc military capabilities, thereby enabling it to pose a greater threat to the security of the United States, its allies and other friendly nations.

(2) Transfers of this kind have been responsible for increases in the defense budget of the United States.

(3) This failure to control the export of national security sensitive technology and commodities is attributed to the diffusion of decisionmaking responsibilities regarding strategic trade matters throughout several Federal agencies.

(4) It has been established that because of the overlapping and frequently confusing responsibilities of the many Federal agencies that administer controls over strategic trade, the United States export control system serves neither national security nor export interests well.

(5) Therefore, in order to maintain both an efficient and equitable system for the

control of national security sensitive technology and commodities, it is necessary to consolidate the functions and decisionmaking authorities to be found throughout the executive branch, into an independent Office of Strategic Trade.

ESTABLISHMENT

SEC. 3. (a) There is established as an independent executive agency an Office of Strategic Trade (hereinafter referred to as the "Office"). The Office shall be headed by a Director of Strategic Trade (hereinafter referred to as the "Director") who shall be appointed by the President by and with the advice and consent of the Senate, and who shall serve for a term of two years. The Office of Strategic Trade shall be administered, in accordance with the provisions of this Act, under the supervision and direction of the Director. The Director shall exercise all of the executive and administrative functions and authorities transferred to the Office of Strategic Trade by this Act. The Director or his designee shall act as Chairman of the Interagency Operating Committee, which shall consist of representatives from the Department of Commerce, the Department of State, the Department of Defense, the Department of Energy, the Department of the Treasury, the Central Intelligence Agency, and the National Aeronautics and Space Administration.

(b) There shall be in the Office of the Director of the Office of Strategic Trade an Exporter Services Facility which shall act as liaison with the business community and shall receive and respond to inquiries from the public or interested persons.

OTHER PRINCIPAL OFFICERS

SEC. 4. (a) There shall be in the Office an Operations Division which shall be headed by a Deputy Director for Operations. It shall be the function of the Deputy Director for Operations to process incoming applications for export licenses, to disseminate such applications to the licensing division for evaluation, and to forward approved licenses to the applicant. In addition, the Operations Division shall monitor conformity of export applications and licenses with the terms and conditions applicable to them. The Operations Division shall perform such other functions as the Director may determine to be appropriate which were carried out prior to the effective date of this Act by the Office of Export Administration's Operating Division.

(b) There shall be in the Office a Compliance Division which shall be headed by a Deputy Director for Compliance and which shall carry out the functions performed prior to the effective date of this Act by the Office of Export Administrations Compliance Division. The Compliance Division shall also conduct all physical inspections for all controlled items, and shall monitor overseas compliance with the Export Administration Act of 1979, and terms and conditions applicable to individual export licenses.

(c) There shall be in the Office a CoCom Division which shall be headed by a Deputy Director for CoCom Affairs and which shall carry out functions relating to the representation of technical positions (including those of military and strategic significance) in connection with the Coordinating Committee for Multilateral Export Controls (CoCom). The CoCom Division shall also provide representatives to the Department of State to assist in negotiations with other members of the Coordinating Committee.

(d) There shall be in the Office a Licensing Division which shall be headed by a Deputy Director for Licensing and which shall be responsible to the Director for the evaluation of criteria and establishment of policy relating to the commodity control list, munitions control list, foreign policy controls, and short supply controls. The Licensing Division shall prepare draft documents and license criteria for license applications and submit such documents to the Interagency Operating Committee for review. In addition, there shall be within the Licensing Division—

(1) an Office of the Operating Committee, which shall disseminate license documents from the licensing officers to the interagency committee members, specify deadlines, collect responses and recommendations from the respective agencies, summarize each agency position for the Office of the Director, and prepare cases for review by the Export Administration Review Board;

(2) an Office of Computer Licensing, which shall prepare draft documents analyzing criteria for licensing with respect to computers in accordance with the commodity control list;

(3) an Office of Capital Goods Licensing which shall prepare draft documents analyzing criteria for licensing with respect to capital goods in accordance with the commodity control list;

(4) an Office of Electronics, which shall prepare draft documents analyzing criteria for licensing with respect to the field of electronics in accordance with the commodity control list;

(5) an Office of Short Supply Licensing which shall prepare draft documents analyzing criteria for licensing with respect to the field of short supplies;

(6) an Office of Munitions Control which shall carry out the functions formerly carried out by the Department of State's Office of Munitions Control in maintaining the munitions control list;

(7) an Office of Technological Data which shall monitor and review the transfer of unembodied technology and knowledge through cultural exchange, educational, or other programs or means;

(8) an Office of Technology Assessment which shall monitor and review exports under general licenses to determine whether items should be added to or deleted from commodity control lists, to assess foreign availability and comparability, and to make periodic (not less often than quarterly) specific recommendations, regarding additions or deletions from the commodity control list to the Deputy Director for Licensing; and

(9) an Office of Foreign Policy Controls which shall formulate and maintain the list of foreign policy controls, in consultation with the Export Administration Review Board.

(e) There shall be in the Office a General Counsel.

TRANSFER OF FUNCTIONS

SEC. 5. There are transferred to the Office of Strategic Trade the following functions and authorities:

(1) those of the Secretary of Commerce pursuant to the Export Administration Act of 1979;

(2) those of the Office of East-West Trade of the Department of State with respect to the munitions list pursuant to the Arms Export Control Act;

(3) those of the United States Customs Service relating to the physical inspection of exports not covered by the commodity control list; and

(4) such other functions and authorities, not specifically or otherwise vested or delegated by statute, as the Director, in consultation with the Director of the Office of Management and Budget, determine to be appropriate.

INCIDENTAL TRANSFERS

SEC. 6. The Director of the Office of Management and Budget, in consultation with the Director, is authorized and directed to make such determinations as may be necessary with regard to the transfer of functions which relate to or are utilized by an agency, commission or other body, or component thereof affected by this Act, to make such additional incidental dispositions of personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to or to be made available in connection with the functions transferred by this Act, as he may deem necessary to accomplish the purposes of this Act.

AUTHORITY OF THE DEPARTMENT OF DEFENSE

SEC. 7. The Department of Defense shall retain all review and veto authorities authorized under the Export Administration Act of 1979.

CONFORMING AMENDMENTS

SEC. 8. (a) Section 5313 of title 5, United States Code, is amended by adding at the end thereof the following item: "Director of Strategic Trade.".

(b) Section 5315 of such title is amended by adding at the end thereof the following: "Deputy Directors, Office of Strategic Trade (4).".

EFFECTIVE DATE

SEC. 9. This Act takes effect upon the expiration of 60 days after enactment.

SECTION-BY-SECTION ANALYSIS

Section 1 provides that the legislation may be cited as "Office of Strategic Trade Act of 1980."

Section 2 contains the Statement of Purpose, which states that our failure to control the transfer of national security sensitive technology to the Soviet Union and other controlled countries has led to a significant improvement in Soviet Bloc military capabilities. In addition, because of the overlapping and frequently confusing responsibilities of the many federal agencies that administer controls over strategic trade, the U.S. export control system serves neither national security nor export interests well. Therefore, in order to maintain an efficient and equitable export control system, it is necessary to consolidate the functions and decision making authorities to be found throughout the executive branch, into an independent Office of Strategic Trade.

Section 3 provides for the establishment of an Office of Strategic Trade.

Section 3 Subsection (a) states that the Office of Strategic Trade shall be an independent executive agency, to be headed by a Director, who shall be appointed by the President and confirmed by the Senate for a two year term of office.

Subsection (b) provides for an Exporter Services Facility, within the Office of the Director, to act as a liaison with the business community and other interested parties.

Section 4 provides for the various functional Divisions within the Office of Strategic Trade, as well as for their principal officers.

Subsection 4(a) provides for an Operations Division, to be headed by a Deputy Director for Operations. The Operations Division will process incoming export license applications to be disseminated to the Licensing Division for evaluation. In addition, the Operations Division shall monitor conformity of export applications and licenses with U.S. law.

Subsection (b) provides for a Compliance Division, to be headed by a Deputy Director for Compliance. The Compliance Division shall carry out all functions that were formerly performed by the Office of Export Administration's Compliance Division. The Compliance Division shall also conduct all physical inspections for controlled items, and shall monitor overseas compliance of the Export Administration Act of 1979.

Subsection (c) provides for a CoCom Division, to be headed by a Deputy Director for CoCom Affairs. The CoCom Division shall assist the Department of State, in repre-

sentation of technical positions (including those of military and strategic significance) at CoCom.

Subsection (d) provides for a Licensing Division, to be headed by a Deputy Director for Licensing. The Licensing Division shall be responsible to the Director for the evaluation of criteria and establishment of policy relating to the Commodity Control List, Munitions Control List, Foreign Policy Controls, and Short Supply Controls. The Licensing Division shall also prepare draft documents and license criteria for license applications, to be submitted to the interagency Operating Committee for review.

Subsection (d)(1) provides for an Office of the Operating Committee, within the Licensing Division, which shall disseminate license documents from the licensing officers to the interagency committee members, specify deadlines, collect responses and recommendations from the respective agencies, summarize each agency position for the Office of the Director, and prepare cases for review by the Export Administration Review board.

Subsection (d)(2) provides an Office of Computer Licensing, which shall prepare draft documents analyzing criteria for licensing with respect to computers in accordance with the Commodity Control List.

Subsection (d)(3) provides for an Office of Capital Goods Licensing which shall prepare draft documents analyzing criteria for licensing with respect to capital goods in accordance with the Commodity Control List.

Subsection (d)(4) provides for an Office of Electronics, which shall prepare draft documents analyzing criteria for licensing with respect to the field of electronics in accordance with the Commodity Control List.

Subsection (d) (5) provides for an Office of Short Supply Licensing which shall prepare draft documents analyzing criteria for licensing with respect to the field of short supplies.

Subsection (d) (6) provides for an Office of Munitions Control which shall carry out the functions formerly carried out by the Department of State's Office of Munitions Control in maintaining the munitions control list.

Subsection (d) (7) provides for an Office of Technological Data which shall monitor and review the transfer of unembodied technology and knowledge through cultural exchange, educational, or other programs or means.

Subsection (d) (8) provides for an Office of Technology Assessment which shall monitor and review exports under general licenses to determine whether items should be added to or deleted from Commodity Control Lists, to assess foreign availability and comparability, and to make periodic (not less often than quarterly) specific recommendations, regarding additions or deletions from the commodity control list to the Deputy Director for Licensing.

Subsection (d) (9) provides for an Office of Foreign Policy Controls which shall formulate and maintain the list of foreign policy controls, in consultation with the Export Administration Review Board.

Subsection (e) states that the Office of Strategic Trade shall have a General Counsel.

Section 5 provides for the transfer of the following and authorities from other agencies to the Office of Strategic Trade: (1) those of the Secretary of Commerce pursuant to the Export Administration Act of 1979; (2) those of the Office of East-West Trade of the Department of State with respect to the Munitions List pursuant to the Arms Export Control Act; (3) those of the U.S. Customs Service relating to the physical inspection of exports not controlled by the Commodity Control List; and (4) other such functions and authorities, not specifically or otherwise vested or delegated by statute, as the Director, in consultation with the Director of the OMB, determines to be appropriate.

Section 6 provides for incidental transfers to be made to the Office of Strategic Trade, as authorized by the Director of the OMB, in consultation with the Director of the Office of Strategic Trade. Determinations are to be made regarding the transfer of functions which relate to or are utilized by an agency, commission or body, or component thereof affected by this Act, to make such additional incidental dispositions of personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, available or to be made available in connection with the functions transferred by this Act.

Section 7 states that the Department of Defense shall retain all review and veto authorities, and its mandate to develop a list of militarily critical technologies, as authorized in Sections 5 and 10 of the Export Administration Act of 1979.

Section 8 amends the U.S. Code where necessary.

Section 8 subsection (a) states that Section 5313 of title 5, U.S. Code, is amended by adding at the end thereof the following item: "Director of Strategic Trade," and provides the Director with a Position II salary (e.g. Deputy Secretary of Defense).

Subsection (b) states that Section 5315 of such title is amended by adding at the end thereof the following: "Deputy Directors, Office of Strategic Trade (4)," and provides each Deputy Director with a Position IV salary (e.g. Assistant Secretaries of Defense).

Section 9 states that this Act will take effect 60 days after its enactment.

THE EMBARGO IS FAILING

(By Arnaud de Borchgrave)

Soon after the invasion of Afghanistan, a Belgian industrialist asked his country's Foreign Minister, Henri Simonet, whether his firm should slow down its construction of a huge chemical complex in the Soviet Union. Replied Simonet: "No, keep going." In Paris two weeks ago, Dzhermen Gvishiana, a top Soviet trade negotiator and the son-in-law of Prime Minister Aleksei Kosygin, held three days of talks with French economic officials. Their decision: full speed ahead toward the goal of trebling Franco-Soviet trade by 1985.

The U.S. continutes to hope that Western Europe will follow its lead in imposing economic sanctions on the Soviet Union as punishment for the invasion of Afghanistan. But the embargo on high-technology trade isn't holding. Recently, Lawrence Brady, a former U.S. Commerce Department export official, warned a Senate subcommittee that Western trade with the Soviet bloc would be back to normal within months. He is rapidly being proven right. Apart from a few token gestures—such as a modest increase in the interest rate on Soviet loans—the allies have done little to hurt their commercial ties to Moscow. For France, among others, this business-as-usual approach is paying off handsomely. French companies are suddenly getting the Kremlin's nod on projects worth hundreds of millions of dollars. They may even land a $500 million deal for an aluminum smelter in Siberia that Alcoa froze because of Afghanistan.

To maintain the commercial connection with Western Europe, Soviet diplomats are courting politicians, labor leaders, and journalists. Their message is that "a minor police action in Afghanistan must not be allowed to interfere with regional detente in Europe." The Soviets constantly play down the significance of Afghanistan, hinting that their occupation forces may withdraw if the country can be protected from "outside interference." That message was played again last week when Soviet President Leonid Brezhnev met with Armand Hammer, chairman of Occidental Petroleum, a U.S. company that stands to lose from a cut in East-West trade.

Proselytizing: With the exception of Britain's Margaret Thatcher, West European leaders are reluctant to do anything that would offend the men in the Kremlin. The Soviets are constantly proselytizing about the growing relevance of Soviet military power to Europe's future—and, by implication, about the growing irrelevance of American power. And trade with the Soviet bloc—a two-way flow that amounted to nearly $80 billion last year—is much more important to the economies of Western Europe than it is to U.S. business.

Soviet exports to West Germany, Russia's biggest Western trade partner, soared to $4.5 billion in 1979, up 28 per cent. West Germany gets 17 per cent of its natural gas from the U.S.S.R.., along with 38 per cent of its enriched uranium for nuclear power. Negotiations are under way between the Russians and a German consortium for a $12 billion natural-gas pipeline deal.

In addition to their economic stake in good relations with Moscow, West German leaders know that the Soviets might respond to an embargo by subjecting West Berlin to another squeeze play. "Berlin," said a high-ranking Common Market official, "is tailor-made for financial and trade blackmail." As a result, there are continuing talks on accords to improve West Berlin's physical links with West Germany—a package that will bring East Germany hundreds of millions of additional Deutsche marks. Plans call for widening and dredging East German canals leading into West Berlin to accommodate bigger barges, building an autobahn to connect Eisenach in the East with Bad Hersfeld in the West and improving rail service.

Since 1967, Western countries and Japan have signed about 2,500 industrial agreements with Soviet-bloc countries, including hundreds of "turnkey" plants. In the last seven years alone the U.S.S.R. has bought $18 billion in capital goods—mostly for its chemical, power and automotive industries, which depend heavily on high technology. Western equipment is now producing 80 percent of the Soviet Union's polyethylene, 75 percent of its chemical fertilizer and 40 percent of its cement.

Trucks and Engines: The Fiat-built plant at Togliatti turns out about half of Russia's automobile production. At the Kama River truck plant—erected with 130 U.S. licenses—the Soviets manufacture 150,000 trucks a year and 100,000 spare engines. Trucks and engines built in that factory are being used in Afghanistan.

All the policy planners and experts I talked to in recent weeks in European capitals concede that the West has contributed directly or indirectly to Russia's huge military build-up over the last ten to fifteen years. "There is no way the Soviet Union could continue to spend from 13 to 15 percent of its GNP on the military without Western assistance," one Common Market high commissioner said privately. Where Western technology does not make a direct contribution to Soviet defense, Western trade and credits (now nearing $70 billion for all Eastern countries) have eased the burden on Russia's civilian sector and allowed Soviet leaders the latitude to allocate even larger resources to the military. To a man, Europe's intelligence directors have reported this to their political superiors. So why isn't anyone listening? Replies the Common Market high commissioner: "It is such an explosive subject that it has almost become taboo to talk about it."

Samuel Pisar, a prominent consultant on and advocate of East-West trade, concedes

that Western technology is routinely examined by special KGB analytical groups to determine potential military usage. Pisar's disclaimer: "I simply don't believe that the Soviet military gets that much out of it." Other experts take a grimmer view. Yves Laulen, NATO's former director for economic affairs and an expert on East-West trade, argues that Western countries now are funding two defense budgets—their own and the Kremlin's.●

By Mr. BAYH:

S. 2607. A bill to provide, in addition to any other remedies available under the laws of the United States, a judicial remedy and procedure for domestic businesses injured by unfair competition from foreign competitors in sales of merchandise within the United States; to the Committee on the Judiciary.

PROTECTION OF UNITED STATES JOBS FROM UNFAIR FOREIGN COMPETITION ACT

● Mr. BAYH. Mr. President, today I am introducing a bill which will provide an additional avenue of relief to workers and firms adversely impacted by unfairly priced imports to those already available through the Department of Commerce, the U.S. International Trade Commission, and the U.S. Special Trade Representative's Office.

Mr. President, the failure to enforce the antidumping and other fair trade statutes of this country in a timely manner is inflationary. It is inflationary because the result of predatory pricing policies and other unfair trade practices by foreign competitors cost Federal, State, and local governments billions of dollars in lost revenue and increased unemployment compensation without buying us any enduring consumer benefit. A loss of a productive job due to foreign trade means a loss of tax revenue and a necessary expenditure in trade adjustment assistance payments. A plant closing means a loss of tax revenues because there are no profits to tax and because a loss will be calculated against future profits if the firm is more than a one-company operation. A growing dependence on products from foreign sources results in U.S. dollars going overseas, increasing the balance of trade deficit and making our fight against inflation that much tougher.

A reciprocal lowering of tariff and nontariff barriers to facilitate the free flow of fair trade is a goal which we in Congress have steadfastly supported. I voted for the Trade Agreements Act of 1979 which sought to lower trade barriers to all countries. But when trade between countries is neither free nor fair, when pricing practices are undertaken specifically to eliminate or injure an American company or entire industry by the exporting country, then we have to move swiftly and augment the existing statutes so a firm does not disappear before import relief can be obtained.

MUST RECOGNIZE INTERNATIONAL REALITIES

The American marketplace is the most open and the most prized in the world. Compared to other countries of the world, we have a tradition of open borders, both in terms of political tradition and economic policies. But we must understand the changing realities of the international marketplace and be prepared to utilize legally recognized remedies to provide relief to workers and firms threatened by unfair trade practice because these practices threaten the future economic well-being of our country as well.

In order to accomplish this, the Protection of U.S. Jobs From Unfair Competition Act would prohibit any person from either importing, assisting in importing, or causing the importation or sale of articles from a foreign country at a price substantially less than the market value or wholesale price of such articles in the principal markets of the country of their production or other foreign countries to which they are commonly exported if first, the sale of these articles would necessarily and directly injure an industry or labor in any line of commerce; second, the sale would prevent, in whole or in part, the establishment of an industry in the United States or, third, restrain or monopolize any part of trade.

In order to obtain this result, my legislation will permit suit to be filed by any person for any violation of, or combination or conspiracy to violate this section in the district court of the United States or any other appropriate court. The result of such action would be an injunction against importation of articles which are resulting in the injury described above because of their sales at less than fair market value. To expedite this process, the district court judge would have a 120-day deadline after the filing of a complaint to make a final judgment.

Another section of this bill also seeks to retain Federal contractor dollars in this country by prohibiting contractors from entering into private reciprocal trade agreements with any foreign nation in exchange for which contracts or subcontracts will be granted to that country. This is meant to prevent "sweetheart" contracts which have been a result of certain contractor practices in recent years and have resulted in a denial of business to smaller U S. firms. This will help insure that Federal procurement dollars remain in the United States in such sectors as the Department of Defense. The penalty here would be treble damages as well as debarment of the contractor and voiding of the contract.

Even though the Trade Agreements Act of 1979 provided changes and improvements in the procedures and administration of countervailing duty and antidumping laws, we are still looking at a "speedy" 280-day investigation between the time which an antidumping petition is filed with the Department of Commerce and a final determination is made by the U.S. International Trade Commission to permit the imposition of antidumping duties. So, I think this legislation as it has been described does make an improvement in terms of timeliness.

We must recognize, Mr. President, that in a number of nations governments act in concert with their national companies to formulate and carry out policies calculated to penetrate foreign markets while keeping their domestic markets closed. We see this in an announcement from Japan where the major computer companies of Japan have combined in a program under government sponsorship to penetrate and dominate the world computer market. American steel companies have for a long time recognized that they were suffering from unfair foreign competition from products which were either dumped or priced because of foreign government subsidies in a manner to permit capture of U.S. markets. These are but two examples of the situation which I am talking about.

The effect of such unfair competition in American markets is not felt solely by the shareholders and owners of American business. It is also felt by workers, who are often the first victims of unfair competition—victims, because the loss of an order to a foreign competitor means the immediate loss of a job in the United States.

The United States was singly responsible for the rejuvenation of the industries of Western Europe and of Japan. This was done by American foreign aid, by American loans, and by the export of American technology. It was done by permitting those foreign countries to have restrictive import laws while permitting our markets to remain open. The development of the Japanese automobile industry is a stunning example of this.

Because of America's generosity those nations are now better equipped in some areas than the United States to engage in free and fair competition. But so often, this foreign success in our marketplace was due to an unfair trade practice. The time has come to assure that when an import sale is made in the United States, which results in the loss of an American job, it is a sale which the importer has earned because of superior technology or superior production techniques. The sale cannot and must not be one which is engineered as a result of foreign government subsidies and unfair competition.

The Antidumping Act has been on the statute books for years, but as testified to by the experiences of the steel companies the remedies within Treasury were inadequate. Antidumping is now administered by the Department of Commerce but the remedies remain inadequate, especially in light of the suspension of the trigger price mechanism to monitor steel imports.

A right, if it is to be enforced, must be enforced in a timely and economic manner. The executive branch cannot provide an adequate remedy against foreign predatory trade practices because the State and Treasury Departments combined with the Office of the President, weigh their actions in predatory trade practices enforcement against the monetary and often illusory needs of international diplomacy.

An injured American worker or businessman must be given direct access to the courts, a timely hearing, a timely resolution and an economic proceeding with respect to a complaint. The purpose of this bill is not to restrain trade; it is to protect American jobs by assuring that any American faced with the loss of his job or his business sales to a for-

eign competitor, has an expeditious, economic and real remedy which will provide immediate relief against predatory foreign competition. A remedy which comes 6 months, a year, 2 years, after the injury, is no remedy at all. The worker affected has been laid off, has moved elsewhere, and has suffered deprivation as has his family. This bill provides direct access to the courts or anyone injured by predatory foreign trade practice and provides for an expeditious and economically efficient hearing and judgment.

COSTS OF IMPORT RELATED UNEMPLOYMENT IS CLIMBING

Mr. President, to return a moment to the point that unfairly priced imports unchecked by aggressive enforcement of antidumping statutes, or because of the nature of the laws themselves, are a cause of inflation, we need only to look at the history of the trade readjustment allowance program. As my colleagues know, this program was established to compensate workers through a supplemental unemployment benefit for their displacement due to imports. While it is not possible to say that all import related unemployment was due to "dumping" or other unfair trade practice, it is clear that those industries most vulnerable to predatory trade practices did show high levels of unemployment.

For instance, steelworkers designated eligible for unemployment compensation have received over $228 million under the TRA program for the period between April 1975 and September 1979. Electrical workers, and here we are talking about color television imports, collected over $10 million in benefits. For this period, total payments were over $815 million. And this does not count the $1.1 billion extra which is going to be needed this year to keep this entitlement program on track.

While the trade adjustment assistance program is one which I fully support because of the principle that no single worker or group of workers should be singled out to bear the burden sometimes caused by free trade as a national policy, we must also face some basic facts. Workers would prefer to work. While special allowances are due them, we all understand and should appreciate that when a man or woman is unemployed, there is a loss for which we cannot compensate. So, on this count alone, I think we just have to do a better job in seeing that workers and firms can obtain timely protection. And the bill I am introducing today does that by adding our court system to the process of remedy to halt the consequences of unfair trade practices.

Mr. President, I hope that the Judiciary Committee can soon take up this important legislation so we can establish this new source of protection for American jobs and American business. While I anticipate that those involved with this Nation's trade policy will not rush to support this bill, it is important that we act. If anything, this legislation ought to provide an incentive to those administering our fair trade laws to prove that we do not need better and swifter performance than has been the case to date.

For too long, this Senator has heard from small firms in his State asking for speedy relief from unfairly priced imports and Heaven and Earth had to be moved before some relief occurred. For too long we have witnessed situations where import relief was coming only when the firm requesting it was a sole surviving company of the entire industry and was about to disappear. For too long we have been reluctant to insist that other nations—who sometimes seem to be waging a trade war against us with the bullets and bombs of government subsidized goods and artificially low-priced imports—play by the rules of the game. In short, the time has come to say to U.S. firms and workers that your Government is behind you. Your Government is not a public relations firm for "Japan, Incorporated" or "France, Inc." We will enforce the law. And we will not delay and in the process deny justice.

Mr. President, I know it sounds odd to call this particular cadence with respect to the admittedly complex problems of international trade policy. But if we have learned anything through our experience with OPEC and our growing awareness of the vulnerability of our economy to external economic factors, we will pass the bill I am introducing today. I urge my colleagues to join me in this effort.

At this point, I ask unanimous consent that a section-by-section summary of this legislation be printed in the RECORD, along with the text of the legislation.

There being no objection, the bill and summary were ordered to be printed in the RECORD, as follows:

S. 2607

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Protection of United States Jobs From Unfair Foreign Competition Act".

SEC. 2. CAUSE OF ACTION.

(a) SALES OF FOREIGN MERCHANDISE AT LESS THAN FAIR VALUE.—Whenever a United States importer of foreign merchandise, or the foreign manufacturer thereof, sells or offers for sale such merchandise at less than its fair value, and such sales or offers for sale—

(1) injure an industry or labor in any line of commerce in any section of the United States,

(2) prevent, in whole or in part, the establishment of an industry in the United States, or

(3) restrain or monopolize any part of trade or commerce in such merchandise, or similar merchandise, in the United States,

then any person injured in his trade or business by such injury, prevention, or restraint or monopoly may, in addition to any other remedy available to him under the laws of the United States, bring an action under this Act for damages, or equitable relief, or both.

(b) Private Reciprocal Trade Agreements by United States Contractors.—Whenever a United States person—

(1) is injured in his trade or business by reason of a private reciprocal trade agreement entered into between a United States person who has entered into a contract to provide goods and services to the United States, or

(2) is aggrieved by the violation of an agreement entered into under section 3(b),

he may, in addition to any other remedy available to him under the laws of the United States, or bring an action under this Act for damages or equitable relief, or both.

SEC. 3. PRIVATE RECIPROCAL TRADE AGREEMENTS BY UNITED STATES CONTRACTORS PROHIBITED.

(a) IN GENERAL.—It shall be unlawful for any person who has entered into a contract with the United States to enter into private reciprocal trade agreements during the term of that contract (including any extensions of renewals thereof) with any foreign nation or any foreign or domestic person pursuant to which—

(1) contracts or subcontracts will be granted or awarded to the contractor, or

(2) favored treatment or other valuable inducements will be granted to the contractor

in exchange for subcontracts or purchases made in connection with the performance of any United States contract or purchase.

(b) CONTRACT WARRANTY REQUIRED.—No officer or employee of the United States charged with responsibility for entering into contracts for the purchase or lease of goods, the furnishing of supplies or power, or the furnishing of services to any agency or instrumentality of the United States may enter into such a contract with any person unless that person agrees in writing, as a material condition of such contract, that, during the term of such contract (including any extensions or renewals thereof)—

(1) he will not enter into a private reciprocal trade agreement, and

(2) he will not comply with the terms of any such agreement to which he became a party before entering into such contract.

(c) CONSEQUENCES OF BREACH OF WARRANTY.—If a person violates an agreement entered into under subsection (b), then—

(1) that person shall be ineligible to enter into any contract with the United States after the date on which the violation occurs,

(2) any existing contracts entered into between that person and the United States shall be voidable at the election of the United States, and

(3) that person shall be liable to the United States for damages in an amount equal to three times the consideration payable under the contract in connection with which the violation occurred.

(d) RECOVERY OF DAMAGES FOR UNITED STATES BY PRIVATE LAWSUIT.—Any person aggrieved by the violation of such an agreement shall have standing to bring an action on behalf of the United States to recover such damages for the benefit of the United States.

SEC. 4. JURISDICTION; VENUE; ETC.

(a) JURISDICTION.—The district courts of the United States shall have exclusive jurisdiction of actions brought under this Act without regard to the amount in controversy.

(b) VENUE.—

(1) IN GENERAL.—An action brought under this Act may be brought in any district—

(A) in which the defendant resides, is found, or has an agent, or

(B) in any district in which the plaintiff resides, does business, or has an agent.

(2) CHANGE OF VENUE.—No change of venue requested by the defendant shall be granted without the consent of the plaintiff.

SEC. 5. PROCEDURE.

(a) SUBPENA.—A subpena issued by a court in an action brought under this Act may be enforced in any judicial district of the United States.

(b) COMPLIANCE WITH ORDERS AND DECREES.—If a United States importer against whom a discovery order, or other order or decree, has been entered by a court in a proceeding brought under this Act fails to comply with such order or decree within the time established by the court for com-

pliance, then the court shall issue an injunction prohibiting that importer from entry, or removal from warehouse, for consumption of merchandise which is the subject of the proceeding or which is similar to such merchandise, and from distribution or sales of such articles, until such time as the court is satisfied that the party has complied with the order or decree.

(c) UNITED STATES NOT TO TAKE POSITION CONTRARY TO PLAINTIFF.—The United States shall not take a position contrary or antagonistic to that taken by the plaintiff in any action brought under this Act to which the United States is a party or in any other action brought under this Act in an amicus curiae brief or any other pleading.

SEC. 6. PERIOD FOR ADJUDICATION; SPECIAL MASTER.

(a) IN GENERAL.—Whenever an action is brought under this Act, it shall be the responsibility of the judge to whom the case is assigned to reach a final judgment within 120 days after the date on which the complaint is filed. A judge to whom such a case is assigned may appoint a special master to hear the case and make findings of fact.

(b) POWERS OF SPECIAL MASTER.—A special master appointed to hear such a case shall have the power to issue subpenas and to take evidence.

(c) REPORT OF SPECIAL MASTER.—After a hearing, but not more than 20 days after the date on which he is assigned to hear the case, the special master shall prepare and submit to the court a report in writing setting forth his findings of fact. The 20-day period may be extended by the judge to whom the case is assigned upon the request of either party and, if the extension is requested by the defendant, then—

(1) only with the consent of the plaintiff, or

(2) upon a showing by the defendant of extreme hardship, impossibility, or other extraordinary good cause.

SEC. 7. ESTABLISHMENT OF PRIMA FACIE CASE IN COMPLAINT.

(a) EFFECT OF PRIMA FACIE SHOWING BY PLAINTIFF.—If the complaint filed by the plaintiff, in an action brought under this Act, sets forth facts upon the basis of which, if true, relief could be granted under this Act, then the plaintiff shall be considered to have established a prima facie case that he is entitled to damages or equitable relief under section 2, and the court shall—

(1) issue immediately a restraining order or injunction prohibiting the defendant from further sale, distribution, or entry, or removal from warehouse, for consumption of the foreign merchandise which is the subject of the action, or

(2) require the defendant to post bond, or other security, in an amount equal to 3 times the amount of damages alleged by the plaintiff to be attributable directly to imports of such merchandise.

(b) CONCLUSIVENESS OF SHOWING.—Whenever a plaintiff in such an action establishes such a prima facie case, the facts so pled shall be treated as conclusive unless the defendant demonstrates that they are not true or that the plaintiff is not entitled to damages or relief under this Act.

(c) SHIFT OF BURDENS IN ACTIONS BROUGHT BY FOREIGN MANUFACTURER OR UNITED STATES IMPORTER.—If the plaintiff in an action brought under this Act is a foreign manufacturer or a United States importer of the foreign merchandise which is the subject of the action, subsections (a) and (b) shall not apply with respect to that action.

SEC. 8. DAMAGES; COSTS; FEES.

(a) DAMAGES.—If the plaintiff in an action brought under this Act establishes that he is entitled to damages under section 2, then—

(1) he shall be entitled to recover 3 times the amount of damages shown to have been suffered, and

(2) any award of damages shall not preclude the granting of such equitable relief as may be appropriate under the circumstances.

(b) COSTS AND FEES.—The court may award court costs and reasonable attorneys' fees to the prevailing party in any action brought under this Act upon request made therefor and when, in the judgment of the court, such award is appropriate.

(c) DAMAGES TO THE UNITED STATES.—Wherever, in an action brought by a plaintiff (other than a foreign manufacturer or a United States importer) under section 2 (b) of this Act, the plaintiff prevails, the court may, upon request made by the plaintiff, award to the United States damages in an amount equal to 3 times the consideration under the contract or contracts between the United States and the defendant which are subject to the private reciprocal trade agreement which was the subject of the action.

SEC. 9. DEFINITIONS.

For purposes of this Act—

(1) SALES AT LESS THAN FAIR VALUE.—Foreign merchandise shall be treated as sold or offered for sale at less than its fair value if the United States price (as defined in section 772 of the Tariff Act of 1930 (19 U.S.C. 1677a)) of such merchandise is lower than—

(A) its foreign market value (within the meaning of section 773 of such Act (19 U.S.C. 1677b)) or,

(B) if the foreign market value cannot be determined, its constructed value (within the meaning of section 773(e) of such Act (19 U.S.C. 1677b(e)).

(2) PRIVATE RECIPROCAL TRADE AGREEMENT.—The term "private reciprocal trade agreement" means an agreement between a United States person and a foreign government or person under which contracts or subcontracts will be awarded to the United States person, or favored treatment or other valuable inducements will be granted to the United States person, by or on behalf of such foreign government or person in exchange for contracts or subcontracts awarded to, or payments made to, such foreign government or person in connection with the performance of any contract with that or any other United States person.

(3) UNITED STATES PERSON.—The term "United States person" means a citizen or resident of the United States, or a corporation, joint venture, partnership, association or other business organization organized under the laws of the United States, or any State thereof, or the District of Columbia.

SEC. 10. ENFORCEMENT AS PART OF THE ANTITRUST LAWS; CRIMINAL PENALTY.

(a) AMENDMENT OF CLAYTON ACT.—Subsection (a) of the first section of the Clayton Act (15 U.S.C. 12) is amended by inserting after "nineteen hundred and thirteen;" the following: "the Protection of United States Jobs From Unfair Foreign Competition Act;"

(b) CRIMINAL PENALTY.—In addition to any liability for damages under section 2, any person who commits any act for which a cause of action for damages is provided by section 2 shall be guilty of a misdemeanor and shall be fined not more than $100,000.

SECTION-BY-SECTION SUMMARY OF THE "PROTECTION OF U.S. JOBS FROM UNFAIR FOREIGN COMPETITION ACT"

Section 1 provides a short title of the Act.

Section 2 provides for two new causes of action for unfair competition and predatory trade practices related to imports of articles of commerce into the United States. The first cause of action is for injunction and legal damages and judgments against any importer who offers to sell or sells merchandise in the U.S. at less than its fair value, where such an act would injure trade of business in the U.S. or create a monopoly.

The second cause of action arises from making unlawful private reciprocal trade agreements pursuant to which contractors to the U.S. Government enter into agreements to sub-contract in exchange for foreign favors.

Section 3 prohibits private reciprocal trade agreements by contractors doing business with the U.S. and contains the requirement that a warranty be provided by any contractor doing business with the U.S. The warranty provides that no private reciprocal trade agreements have been or will be entered into. This section also states the consequences arising from a breach of the warranty; those consequences provide for the debarment for any person entering into a private reciprocal trade agreement and to make voidable at the election of the U.S., any contracts that any person who has breached such warranty may have with the U.S. The section further provides for damages to the U.S. in the amount of 3 times the consideration payable by the contract in connection with which the violation occurred, and also provides that if the U.S. will not act, any person aggrieved by the violation can bring an action on behalf of the U.S. as well as himself.

Section 4 sets out the jurisdiction and revenue where actions may be brought and provides substantially for national jurisdiction and venue. The Section also protects the Plaintiff from a change of venue to which he does not consent.

Section 5 deals with the sanctions to be imposed against any importer who refuses to comply wtih any subpoena or order issued by a Court under this act. The sanction provides that the failure to comply will result in a judicial prohibition against the importation which is being challenged.

Section 5 also states that the United States may take no position adverse to the Plaintiff in any action.

Section 6 requires that a final judgment be rendered within 120 days of filing of the complaint and empowers the District Court Judge hearing the matter to appoint a special master to expedite the hearing and decisions.

Section 7 provides for an expeditious joining of the issue by establishing that when a *prima facie* case exists in the pleadings in an action brought under this act, that the burden of proof switches to the Defendant who must prove that allegations made by the Plaintiff are not well founded.

Section 8 of the act provides for damages, litigation costs and fees including legal fees, and permits the recovery of treble damages and other equitable relief. This section further provides that if the private reciprocal trade agreement warranty is breached, that the U.S. can recover an amount equal to three times a consideration under the prohibited agreement or contracts which were the subject of the private reciprocal trade agreement.

Section 9 provides definitions for the act.

Section 10 provides a legislative history, providing that this act amends the Clayton Act, and also provides for misdemeanor penalties for any violations under this act and a fine not to exceed $100,000.●

By Mr. BAYH:

S. 2608. A bill to improve economy and reduce inefficiency in Government and to alleviate the paperwork burdens of individuals, small businesses, and small organizations; to the Committee on Governmental Affairs.

PAPERWORK REDUCTION ACT

● Mr. BAYH. Mr. President, Americans are splashing around and drowning in

an endless sea of paper, and are tangled in webs of redtape. At the present time we spend 786 million hours per year filling out forms and giving all sorts of information to the Federal Government. About 73 percent of all Federal reporting is associated with the assessment and collection of Federal taxes. How many hours does every American spend poring over tax forms? Facing the language intricacies of tax forms is sometimes like trying to figure out the secret code of some foreign power.

Regulatory and financial reporting make up 13 percent of the total reporting time; applications for Federal benefits and Government jobs and services are 9 percent; program evaluation and research reporting is 4 percent; and general statistical reporting makes up the final 1 percent.

Granted our world is becoming more and more complex. But that is no excuse for showering us with more paper. At the worst, Federal paperwork requirements in themselves make our lives many times more complicated. New methods must be developed to obtain only necessary and directly relevant information to be used only for specific tasks.

All agencies should be subject to the discipline of coordination and reduction of paperwork. Coordination between agencies on information collection forms must be enhanced so that the information we do collect is not duplicated, and is used as efficiently as possible.

The administration has made great strides in dealing with the paperwork problem. Since 1977, the paperwork burden has been reduced across the board by 15 percent. But because they have acted, administratively, there is no guarantee that the progress made will continue.

It is with this concern in mind I am introducing the Paperwork Reduction Act of 1980. This bill creates a policy framework within which the Federal Government must work. No new bureaucracy would be needed to effectuate the goals of this bill. The bill codifies the best of the paperwork coordination and reduction practices that are proving successful today administratively, and which provide a framework for further improvement.

My bill would:

First. Require that all Federal agencies—including the so-called independent agencies—submit their information requests through the Federal Office of Management and Budget. OMB would be the central coordinating agency for all paperwork in the executive branch. GAO's coordinating authority in this area will be repealed. OMB already has a division, the Office of Regulatory and Information Policy, which would appropriately take the lead in such coordination.

Second. Require that each agency designate an existing official to be responsible for minimizing both the agency's use of forms and the resulting paperwork burden relating to proposed regulations and legislation.

Third. Require that agencies will pay particular attention to the special burdens faced by individuals and small organizations in responding to requests for information. To minimize these burdens agencies shall, whenever possible forego uniform or universal reporting requirements and rely instead on sampling, reduced frequency of reporting, differing compliance standards, or exemptions.

Fourth. Require that each agency prepare an annual paperwork budget, which will be an estimate of the total number of hours required to comply with requests for information. The budget will itemize each form used, describe its purpose and identify those affected by it. The Director of the Office of Management and Budget shall review and may modify each agency's proposed budget.

Fifth. Require that forms or similar requests for information be reviewed within 2 years after their initial issuance by OMB and then at least once every 5 years. Following review, they shall be revised or abandoned to the extent they are not required to meet an agency's basic information needs. These reviews will be conducted by the agencies, and reports of the reviews will be submitted to the Director of OMB.

Sixth. Require that the Director audit compliance with this act and may issue rules necessary to implement it. The Director may issue exemptions for agencies whose use of forms is limited. The Director also shall:

Seek to eliminate duplication in requests for information by establishing a Federal information locator system, which will list all the types of information collected by Federal agencies and will be available for us by all agencies. This or similar systems shall not contain any information obtained from the public and will be subject to the Privacy Act and the Freedom of Information Act. The Director shall take any other steps needed to prevent duplication, including the assignment to a particular agency of lead responsibility for the collection of certain types of information.

Seek to inform the public and broaden public and agency comment by preparing and publishing in the Federal Register on annual paperwork calendar of significant requests for information. This calendar will be based on the information contained in the agencies' paperwork budgets.

Report annually to the President and the Congress on implementation of this act and control of the paperwork burden generally.

Seventh. Set up a procedure whereby the independent agencies may override the Director of OMB's decision if a majority of the members so vote.

It is my feeling that we need strong and definitive action to deal with the blizzard of paper. I urge my colleagues in the Senate and the House to join with me in battling the paperwork burden.

Mr. President, I ask unanimous consent that this bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2608

Be it enacted by the Senate and House of Representatives of the the United States of America in Congress assembled, That this Act may be cited as the "Paperwork Reduction Act of 1980."

INFORMATION FOR FEDERAL AGENCIES

SEC. 2. (a) Section 3501 of title 44, United States Code, is amended—

(1) by inserting after the first sentence the following: "A Federal agency shall only collect information which is necessary and directly relevant to carrying out the functions of the agency,"; and

(2) by inserting before the last sentence the following new sentence: "Any report form, application form, schedule, questionnaire, or other document used by an agency to collect information shall be as short as possible and shall elicit information in a simple and understandable manner.".

CENTRAL CLEARANCE OF INFORMATION COLLECTION

SEC. 3. (a) Section 3512 of title 44, United States Code, is repealed.

(b)(1) The first paragraph of section 3502 of title 44, United States Code, is amended to read as follows:

" 'Federal agency' means an executive department, commission, independent establishment, corporation owned or controlled by the United States, board, bureau, division, service, office, authority, or administration in the executive branch of the Government or an independent regulatory agency; but does not include the General Accounting Office nor the governments of the District of Columbia and of the territories and possessions of the United States, and their various subdivisions;".

(2) The third paragraph of such section is amended by striking out the period and inserting a semicolon and "and".

(3) Such section is amended by adding at the end thereof the following new paragraph:

" 'Independent regulatory agency' means the Board of Governors of the Federal Reserve System, the Civil Aeronautics Board, the Commodity Futures Trading Commission, the Consumer Product Safety Commission, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Federal Election Commission, the Federal Energy Regulatory Commission, the Federal Home Loan Bank Board, the Federal Maritime Commission, the Federal Trade Commission, the Interstate Commerce Commission, the Mine Enforcement Safety and Health Review Commission, the National Labor Relations Board, the Nuclear Regulatory Commission, the Occupational Safety and Health Review Commission, the Postal Rate Commission, and the Securities and Exchange Commission.".

(c) Section 708 (f) of the Public Health Service Act (42 U.S.C. 292h(f)) is repealed.

(d) Section 400A of the General Education Provisions Act (20 U.S.C. 1221–3) is repealed.

(e) Section 201(e) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1211(e)) is repealed.

INFORMATION SHARING

SEC. 4. The second paragraph of section 3507 of title 44, United States Code, is repealed.

CLEARANCE PROCEDURES

SEC. 5. (a) Section 3509 of title 44, United States Code, is amended by striking out "A" and inserting in lieu thereof "(a)(1) Except as provided in paragraph (2), a".

(b) Such section is further amended by adding at the end thereof the following:

"(2) An independent regulatory agency may conduct or sponsor the collection of information which has been disapproved by the Director under paragraph (1) if a majority of the members of the agency vote to disapprove the disapproval of the Director.

"(b)(1) In carrying out the provisions of subsection (a), the Director shall take such action as he determines necessary to eliminate the collection of duplicative informa-

tion, including the establishment of the Federal information locator system pursuant to paragraph (2).

"(2) The Director of the Office of Management and Budget shall develop and establish a Federal information locator system. The system shall list and classify all types of information collected by Federal agencies, but shall not contain any information obtained from the public. The system shall be subject to the provisions of sections 552 and 552a of title 5 and of the Privacy Act of 1974. The Director shall make the system available for use by all Federal agencies.

"(c) The Director of the Office of Management and Budget shall prepare and publish in the Federal Register an annual Federal information collection calendar. The calendar shall contain a list of significant requests by Federal agencies under subsection (a) for approval of the collection of information and shall invite public comments with respect to any such request.".

ADDITIONAL AGENCY PROCEDURES

SEC. 6. (a) Chapter 35 of title 44, United States Code, is amended by adding at the end thereof the following new section:

"§ 3513. Federal agency information collection procedures

"(a) Each Federal agency shall designate an officer or employee of the agency to be responsible for—

"(1) minimizing the use by the agency of report forms, application forms, schedules, questionnaires, or other documents used to collect information;

"(2) reducing the burden imposed upon persons as a result of compliance with such forms, schedules, questionnaires, and documents; and

"(3) carrying out the provisions of subsection (b).

"(b) Each Federal agency shall examine and monitor the burdens imposed upon individuals, small businesses, and small organizations as a result of compliance with report forms, application forms, schedules, questionnaires, or other documents used by the agency to collect information and shall take such action as may be necessary to minimize such burdens, including—

"(1) the use of sampling techniques to obtain information from such individuals, businesses, or organizations;

"(2) the establishment of timetables which reduce the frequency of compliance by such individuals, businesses, and organizations with any such form, schedule, questionnaire, or document;

"(3) the establishment for such individuals, businesses, or organizations of differing compliance requirements with any such form, schedule, questionnaire, or document; or

"(4) the establishment of an exemption for such individuals, businesses, or organizations from compliance with any such form, schedule, questionnaire, or document.

"(c)(1) Each Federal agency shall prepare and transmit to the Director of the Office of Management and Budget an annual information collection budget. The budget shall—

"(A) estimate the total number of hours required to comply with all report forms, application forms, schedules, questionnaires, or other documents used by the agency to collect information;

"(B) contain, for each such form, schedule, questionnaire, or document—

"(i) a description of the purpose of and the persons affected by the form, schedule, questionnaire, or document; and

"(ii) an estimate of the number of hours required to comply with the form, schedule, questionnaire, or document.

"(2) The Director shall review each information collection budget received pursuant to paragraph (1) and may make such modifications in the budget as he finds appropriate. After making any such modifications, the Director shall approve and transmit the information collection budget to the Federal agency.

"(3) Except as provided in paragraphs (3) and (4), a Federal agency may not issue to any person in any year a report form, application form, schedule, questionnaire, or other document used by the agency for the collection of information if the number of hours required for compliance by all persons to which such form, schedule, questionnaire, or document is issued causes the total number of hours required for compliance in such year with all report forms, application forms, schedules, questionnaires, or other documents used by the agency to collect information to exceed the total number of such hours established for the agency for such year in the information collection budget approved by the Director pursuant to paragraph (2).

"(4) An independent regulatory agency may issue a report form, application form, schedule, questionnaire, or document which causes the agency to exceed the limitation established by paragraph (3) if a majority of the members of the agency vote to approve the collection of information pursuant to such form, schedule, questionnaire, or document.

"(5) Upon good cause shown by a Federal agency, the Director may waive the limitation established by paragraph (4).

"(d) Within two years after the issuance of a report form, application form, schedule, questionnaire, or other document used by a Federal agency to collect information, and at least every five years thereafter, each Federal agency shall review each such form, schedule, questionnaire, or document to determine if the form should be revised or discontinued. The agency shall prepare and transmit to the Director of the Office of Management and Budget a report concerning each review made under this section.".

(b) The table of sections for such chapter is amended by adding at the end thereof the following:

"3513. Federal agency information collection procedures.".

TECHNICAL AMENDMENT

SEC. 7. Section 3510 of title 44, United States Code, is amended by striking out "sections 3501–3511 of".

ANNUAL REPORT

SEC. 8. The Director of the Office of Management and Budget shall monitor compliance by Federal agencies with the provisions of the amendments made by this Act and shall prepare and transmit to the President and the Congress an annual report which describes the efforts of Federal agencies to implement such provisions and to reduce the burdens imposed upon persons outside the Federal Government by Federal information collection activities.

EFFECT ON OTHER LAW

SEC. 9. The provisions ef chapter 35 title 44, United States Code, as amended by the preceding sections of this Act, shall supersede any statute enacted before the date of the enactment of this Act which grants authority to a Federal agency to conduct or sponsor the collection of information without the prior approval of the Director of the Office of Management and Budget.

DEFINITION

SEC. 10. For the purposes of this Act the term "Federal agency" has the same meaning as in section 3502 of title 44, United States Code.●

By Mr. HEINZ:

S. 2609. A bill to amend the Solid Waste Disposal Act (Public Law 94–480), as amended; to the Committee on Environment and Public Works.

VIOLATORS OF HAZARDOUS WASTE LAWS SHOULD BE SUBJECT TO STIFF CRIMINAL PENALTIES

● Mr. HEINZ. Mr. President, I rise today to offer legislation designed to fill a major gap in the hazardous wastes control legislation already on the books—the Resource Conservation and Recovery Act—RCRA—of 1976, which if EPA ever fully implements the intent of Congress, will provide safe cradle-to-grave handling of hazardous wastes—and legislation which we need to pass as quickly as possible—S. 1480, the Environmental Emergency Response Act, otherwise known as Superfund, of which I am a cosponsor.

The legislation which I am introducing today would make violators of RCRA regulations governing the production, storage, treatment, transportation, and disposal of hazardous chemical wastes subject to criminal penalties, and would make certain violations a felony.

So that my distinguished colleagues can have the opportunity to review the specifics of this legislation, I ask unanimous consent that the text of my bill be printed in the RECORD.

Mr. President, criminal penalties for violators are necessary to serve as an added deterrent to those unscrupulous few who fail to take the proper safeguards in producing, storing, transporting, and disposing of hazardous chemical wastes and thus endanger the health and safety of us all. If violation of certain RCRA regulations is made punishable by criminal penalties, prosecution can be pursued by the State—regardless of whether the victims of improper handling of hazardous wastes have the inclination and the financial resources to file suit.

In addition, my bill would make it a felony to knowingly transport, treat, store, or dispose of hazardous wastes in violation of RCRA. It would also be a felony to transport, treat, store, or dispose of hazardous wastes "in reckless disregard of the fact that * * * [such action] thereby causes or creates a substantial danger or risk to human life or health." By making these violations a felony, it would be possible to enlist the investigative resources of the Federal Bureau of Investigation in tracking down violators.

In fact, this provision has been recommended by the hazardous wastes unit within the Justice Department to aid in the investigation and prosecution of suspected violators of Federal hazardous wastes laws. A similar provision was adopted on the floor of the House as an amendment to the Resource Conservation and Recovery Act Amendments of 1979, which is now in conference with the Senate. It is my hope that the Senate conferees on this bill, S. 1156, will agree to incorporate the provisions of my bill in the conference agreement.

The environmental health threat posed by hazardous wastes is one to which I have devoted a great deal of attention because Pennsylvania is at the epicenter of this "chemical time bomb." As evidence of the growing concern about this problem, I have received over 700 letters from constituents expressing

their outrage over improper and illegal chemical dumping and asking for legislative action.

Although the problem of hazardous wastes is a nationwide one, the problem in Pennsylvania is particularly acute. My State now produces 10 times as much hazardous waste as can be safely disposed of within its boundaries. Even more distressing are the following facts:

Pennsylvania has not one legal site for disposal of the most toxic chemical wastes;

Pennsylvania has no requirement for permits for haulers of hazardous wastes;

Pennsylvania levies a fine of only $300 for illegal dumping.

Compounding the problem are tough new hazardous waste disposal laws passed by the State of New Jersey. As a result, Pennsylvania now receives illicit hazardous wastes cargo estimated at 15,000 truckloads per year.

Of the many toxic waste dumps in Pennsylvania, two such environmental hazards which I have visited on several occasions dramatize the urgent need for Federal action: Full implementation of RCRA, passage of Superfund, and imposition of criminal penalties for violators. One is the Melvin Wade dump in Chester, Pa., where over a period of 1½ years truckloads of drums containing sodium copper cyanide, phenol, benzene, and other toxics still to be identified were illegally dumped.

Following visits to the Wade site and meetings with concerned citizens, I have been successful in securing public health testing for the residents by the Center for Disease Control. In addition, the Pennsylvania Department of Environmental Resources has signed a $350,000 contract for the removal of 15,000 drums from the Wade site. However, the ultimate cost of cleaning up the ground and water contamination at the Wade site could cost as much as $3 million—well beyond the resources of existing State and Federal programs.

Also dramatizing the need for stricter enforcement of existing laws, passage of Superfund, and imposition of criminal penalties for violators is another environmental health threat at the Pittston mine tunnels on the Susquehanna River in Luzerne County. Into these mine tunnels over which Pittston Township lies, several companies dumped millions of gallons of oil and poisonous industrial wastes over a 32-month period; one company alone dumped over 300,000 gallons per month. Back in October, when hydrogen cyanide gas was discovered to be forming in the tunnels, I donned a gas mask and toured the site. More recently, in February, I was back in Pittston to announce the beginning of a $300,000 investigation to determine the most appropriate means of cleaning up the mine tunnels. Already, EPA has spent over $800,000 on cleanup and containment efforts at Pittston, stretching the legal and financial constraints of section 311 of the Clean Water Act to their limits. The total cost of cleaning up Pittston—of processing the noxious wastes in the mine tunnels—is estimated to be over $10 million. This estimate, probably on the conservative side, represents almost one-third of funding under section 311 for all such cleanups nationwide.

In short, Mr. President, I cannot impress upon my distinguished colleagues too strongly the need for swift Federal action to mitigate the environmental health threat posed by hazardous wastes. Passage of my bill, enactment of Superfund and full implementation of RCRA would go a long way toward meeting this goal.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2609

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Solid Waste Disposal Act (P.L. 94-480), as amended, is hereby further amended by—

Section 3008(d) of such Act is amended by—

(1) striking out the period following the word "subtitle" at the end of paragraph (3) and by inserting a comma and the following at the end of such paragraph (3):

"(4) knowingly generates, stores, treats transports, disposes of, or otherwise handles any hazardous waste (whether such activity took place before or takes place after the date of the enactment of this paragraph) and who destroys, alters, or conceals any record maintained with respect to the generation, storing, treatment, transportation, disposal, or other handling of hazardous waste, or

"(5) transports, treats, stores, or disposes of any hazardous waste identified or listed under this subtitle in reckless disregard of the fact that he thereby causes or creates a substantial danger or risk to human life or health";

(2) striking out "knowingly" in so much of such section 3008(d) as precedes paragraph (1) thereof;

(3) inserting "knowingly" after "(1)", "(2)", and "(3)";

(4) inserting after "$25,000" the following "($50,000 in the case of a violation of paragraph (1), (2), or (5))";

(5) inserting after "one year" the following "(two years in the case of a violation of paragraph (1), (2), or (5))"; and

(6) by striking out the last sentence thereof.

(3) by adding the following new subsection at the end thereof:

(e) RECKLESS.—For purposes of subsection (d)(5), a person's state of mind is reckless with respect to—

"(1) an existing circumstance if he is aware of a substantial risk that the circumstance exists but disregards the risk; or

"(2) a result of his conduct if he is aware of a substantial risk that the result will occur but disregards the risk. For purposes of this subsection, a substantial risk is a risk that is of such a nature and degree that to disregard it constitutes a gross deviation from the standard of care that a reasonable person would exercise in such a situation.".●

By Mr. DURENBERGER:

S. 2610. A bill to amend the Internal Revenue Code of 1954 to increase the investment tax credit for commuter highway vehicles to 20 percent, and for other purposes; to the Committee on Finance.

S. 2611. A bill to amend the Internal Revenue Code of 1954 to exclude from gross income certain amounts received in connection with the provisions of alternative commuter transportation, and for other purposes; to the Committee on Finance.

NEW INCENTIVES FOR VANPOOLING AND EMPLOYEE TRANSPORTATION PROGRAMS

● Mr. DURENBERGER. Mr. President, today I am introducing two bills which provide new incentives for vanpooling and employee transportation programs. The importance of this legislation can be seen by examining the statistics which define our Nation's energy problem.

The energy crisis is a crisis of liquid fuels. Crude oil and petroleum products account for one-half of the energy we use each day. And one-half of our petroleum is imported. It is this dependence on foreign oil that makes energy policy one of the most important problems facing our Nation.

We use one-half of our oil for transportation—to move people and goods by auto, truck, plane, water, train, rail and bus. One-half of our transportation energy, one-quarter of the oil we consume, is used as gasoline in the automobile and one-third of all automobile travel is recorded as daily commuter trips to and from the workplace. Each day American automobiles consume 1.6 million barrels of oil moving passengers to work and home again. Seventy-five percent of these automobiles carry only one person.

In 1979 the average American automobile had an efficiency of 13.7 miles per gallon. This means that the one-person commuter trip required 9,125 Btu's per passenger mile. A 1977 study by the Congressional Budget Office found that the average carpool required only 3,670 Btu's per passenger and the average vanpool only 1,560 Btu's. Mr. President the energy efficiency achievable by ridesharing programs is truly remarkable. Our prodigious use of petroleum for commuting, our dependence on imported oil and the possibility of significant energy savings through alternative commuting modes suggests that ridesharing should be an important part of our energy policy.

The legislation I am introducing today would make small changes in current law to provide additional incentives for ridesharing. The first bill adds vanpool vehicles to the list of energy properties qualifying for the business energy tax credit and sets the energy percentage at 10 percent. It also removes the term "taxpayer" from the current definition of vanpool vehicles, so that leased vans will be eligible for the credit. Finally, this bill excludes driver incentive mileage from the 80/20 rule which is also a part of the vanpool definition.

The second bill is designed to remove some of the ambiguity in current law regarding employer programs to support and encourage ridesharing and mass transit utilization by employees. This bill would exclude from personal income any payment by the employer to the employee made as a subsidy for the cost of mass transportation. If the employer provides bus fare or transportation to and from work in a vanpool, the cost of that transportation would not be included as income for tax purposes. Any

administrative cost borne by the employer for ridesharing programs would also be excluded. Finally a driver in a ridesharing vehicle who collected fees from his or her riders would not be required to report the fees as personal income.

Mr. President, these two bills are not going to change the pattern of commuter transportation overnight, but they do offer important incentives to improve the energy efficiency of the work trip.

I ask unanimous consent that the text of these bills be printed in the RECORD.

There being no objection, the bills were ordered to be printed in the RECORD, as follows:

S. 2610

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) subparagraph (A) of section 48(1)(2) of the Internal Revenue Code of 1954 (defining energy property) is amended—

(1) by striking out "or" at the end of clause (viii),

(2) by inserting "or" at the end of clause (ix), and

(3) by adding at the end thereof the following new clause:

"(x) commuter highway vehicles (as defined in section 46(c)(6)(B)),".

(b) The table contained in clause (i) of section 46(a)(2)(C) of such Code (relating to energy percentage) is amended by adding at the end thereof the following new subclause:

"VII. Commuter Highway Vehicles.—Property described in section 48(1)(2)(A)(x), 10 percent, Jan. 1, 1981, Dec. 31, 1985".

SEC. 2. (a) Paragraph (6) of section 46(c) of the Internal Revenue Code of 1954 (relating to special rule for commuter highway vehicle) is amended—

(1) by striking out "the taxpayer's" in subparagraph (B)(ii)(I) thereof, and

(2) by adding at the end thereof the following new subparagraph:

"(C) Driver incentive mileage.—If an individual other than the taxpayer is the regularly scheduled driver of a highway vehicle, the taxpayer shall not take into account, for purposes of determining if such vehicle meets the requirements of subparagraph (B)(ii), the number of miles which the driver uses such vehicle for personal purposes.".

(b) The amendment made by this section shall apply to property acquired after December 31, 1980.

S. 2611

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) subsection (b) of section 124 of the Internal Revenue Code of 1954 is amended to read as follows:

"(b) Qualified Transportation.—For purposes of this section, the term 'qualified transportation' means transporation—

"(1) by a commuter highway vehicle (as defined in section 46(c)(6)(B) but without regard to clause (iii) or (iv) thereof), or

"(2) which is scheduled land or water transportation which is—

"(A) in a vehicle or vessel with seating capacity of 8 or more adults (not including the operator),

"(B) along regular routes, and

"(C) available to the general public.".

(b) Paragraph (1) of section 124(d) of such Code (defining provided by the employer) is amended to read as follows:

"(1) Provided by the employer.—Transportation shall be considered to be provided by an employer if—

"(A) the transportation is furnished in a commuter highway vehicle (described in subsection (b)(1)) operated by or for the employer; or

"(B) the employer pays for qualified transportation (described in subsection (b)) or reimburses the employee for the cost to the employee of such qualified transportation.".

(c) Section 124 of such Code (relating to qualified transportation provided by employer) is amended by redesignating subsection (e) as (f) and by inserting after subsection (d) the following new subsection:

"(e) Special Rule for Ride-Sharing Programs.—

"(1) In general.—For purposes of subsection (a), any services provided by an employer in connection with a ride-sharing program shall be treated as qualified transportation provided by the employer.

"(2) Definitions.—For purposes of this subsection—

"(A) Ride-sharing program.—The term 'ride-sharing program' means any program to assist employees in locating other employees to share transportation between the employees' residences and places of employment.

"(B) Services provided by employer.—The term 'services provided by the employer' includes, but is not limited to—

"(i) any amounts contributed by the employer,

"(ii) any compensation paid to any employee operating or assisting in a ride-sharing program, and

"(iii) any computer services provided by the employer.".

(d) The amendments made by this section shall apply to taxable years beginning after December 31, 1979.

SEC. 2. (a) Part III of subchapter P of chapter 1 of the Internal Revenue Code of 1954 (relating to items specifically excluded from gross income) is amended by redesignating section 128 as section 129 and by inserting after section 127 the following new section:

"SEC. 128. INCOME FROM OPERATION OF TRANSPORTATION POOLS.

"In the case of an individual who—

"(1) owns a motor vehicle the seating capacity of which is not more than 15 adults;

"(2) transports individuals between their places of residence and places of employment or other places of gathering;

"(3) would otherwise travel to one such place of employment or gathering even if he did not transport any other individual; and

"(4) does not make such vehicle generally available to the public,

gross income does not include amounts received as compensation for the providing of transportation to such individuals.".

(b) The table of sections for such subpart is amended by striking out the item relating to section 128 and inserting in lieu thereof the following:

"128. Income from operation of transportation pools.

"129. Cross references to other Acts.".

(c) The amendments made by this section shall apply to taxable years beginning after December 31, 1979.●

By Mr. PERCY (for himself, Mr. MCGOVERN, Mr. BOSCHWITZ, and Mr. CULVER):

S. 2612. A bill to regulate the feeding of garbage to swine; to the Committee on Agriculture, Nutrition, and Forestry.

SWINE HEALTH PROTECTION ACT

Mr. PERCY. Mr. President, today I am introducing a bill, the Swine Health Protection Act, on behalf of myself, Senator MCGOVERN, Senator BOSCHWITZ, and Senator CULVER. I pay tribute to Senator MCGOVERN for his initiative in this regard and his deep concern, as well as that of my distinguished colleagues, Senator BOSCHWITZ and Senator CULVER.

This bill is designed specifically to address the real possibility of the introduction into the United States of a deadly infectious disease of pigs, African swine fever.

I have a primary interest in this matter because Illinois happens to be the second largest hog-producing State in the country. Nationally, pork production is a billion dollar industry. The pork industry, and pork producers in Illinois, are very concerned about the possible introduction of African swine fever in the United States. The acute form kills almost all the hogs that become infected. There is no known cure.

African swine fever had never been found in the Western Hemipshere until an outbreak occurred in Cuba in 1971. Since then, the disease has been discovered in the Dominican Republic, Haiti, and Brazil.

In January, the National Pork Producers Council sent a study team to Puerto Rico, the Dominican Republic, and Spain to study the effects of African swine fever. The team reported on the efforts being made either to eliminate or to prevent the further spreading of this disastrous disease. The Agency for International Development is assisting the Government of the Dominican Republic at this very moment to eradicate African swine fever. Unfortunately, a severe problem still exists in Haiti. Only when African swine fever is totally eradicated from the Western Hemisphere will the mainland U.S.A. be free from the potential problem.

African swine fever seems to be communicated through meat from infected or carrier pigs. Scraps of such meat in garbage fed to swine is the conduit by which the disease gains entrance into countries free of the disease. This fact alone emphasizes the importance of avoiding the feeding of garbage to swine without some kind of regulation or control.

The proposed legislation would regulate the processing of garbage to be fed to swine in those States where such regulations are not already effective and provide that garbage may be fed to swine only if treated to kill disease organisms in accordance with directives issued by the Secretary of Agriculture.

This legislation is identical to H.R. 6593, introduced in the House of Representatives on February 25, by Congressmen FINDLEY and MADIGAN of Illinois. I commend them for their leadership in this important matter.

The most logical way to keep African swine fever out of the United States is to control the feeding of garbage to swine. The prospect of its spreading quickly throughout the country, should an outbreak ever occur, is very real indeed.

This is a matter of great consequence to the pork industry and consumers of America. I look forward to working with my Senate colleagues for the passage of this bill.

Mr. President, the November 1979, edition of the Farm Journal carried an excellent article discussing the African swine fever problem. I ask unanimous consent that it be printed in the RECORD, along with the text of the bill.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 2612

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Swine Health Protection Act".

FINDINGS

SEC. 2. The Congress hereby finds and declares that—

(1) raw garbage is one of the primary media through which numerous infectious or communicable diseases of swine are transmitted;

(2) if certain foreign diseases, such as foot-and-mouth disease or African swine fever, gain entrance into the United States, such diseases may be spread through the medium of raw or improperly treated garbage which is fed to swine;

(3) African swine fever, which is potentially the most dangerous and destructive of all communicable swine diseases, has been confirmed in several countries of the Western Hemisphere, including the Dominican Republic and, most recently, in Cuba;

(4) swine in the United States have no resistance to African swine fever and there are no effective vaccines to this deadly disease;

(5) the interstate and foreign commerce in swine and swine products and producers and consumers of pork products could be severely injured economically if African swine fever enters this country;

(6) it is impossible to assure that all garbage fed to swine is properly treated to kill disease organisms unless such treatment is closely regulated and conducted only where no swine are located;

(7) therefore, in order to protect the commerce of the United States and the welfare of the citizens of this country, it is necessary to regulate the treatment of garbage to be fed to swine, and to prohibit the feeding of garbage to swine, except garbage treated in accordance with the requirements of this Act and regulations promulgated hereunder.

DEFINITIONS

SEC. 3. For purposes of this Act—

(1) the term "Secretary" means the Secretary of Agriculture;

(2) the term "garbage" means all waste material derived in whole or in part from meats or other animal (including fish and poultry) material, and other refuse of any character whatsoever that has been associated with any such material, resulting from the handling, preparation, cooking, or consumption of food, except that such term shall not include waste from ordinary household operations which is fed directly to swine on the same premises where such household is located;

(3) the term "person" means any individual, corporation, company, association, firm, partnership, society, or joint stock company or other legal entity;

(4) the term "State" means the fifty States, the District of Columbia, Guam, Puerto Rico, the Virgin Islands of the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, and the territories and possessions of the United States.

PROHIBITION OF CERTAIN GARBAGE FEEDING

SEC. 4. (a) No person shall feed or permit the feeding of garbage to swine except in accordance with subsection (b) of this section.

(b) Except when prohibited by State law, garbage may be fed to swine only if treated to kill disease organisms, in accordance with regulations issued by the Secretary, at a facility holding a valid permit issued by the Secretary, or the chief agricultural or animal health official of the State where located if such State has entered into an agreement with the Secretary pursuant to section 9 of this Act. No person shall operate a facility for the treatment of garbage knowing it is to be fed to swine unless such person holds a valid permit issued pursuant to this Act.

ISSUANCE, SUSPENSION, AND REVOCATION OF PERMITS

SEC. 5. (a) Any person desiring to obtain a permit to operate a facility to treat garbage that is to be fed to swine shall apply therefor to the Secretary, or to the chief agricultural or animal health official of the State where the facility is located if such State has entered into an agreement with the Secretary pursuant to section 9 of this Act, and provide such information as the Secretary shall by regulation prescribe. No permit shall be issued unless the facility—

(1) meets such requirements as the Secretary shall prescribe to prevent the introduction or dissemination of any infectious or communicable disease of animals or poultry, and

(2) is so constructed that swine are unable to enter the premises on which the facility is located and are unable to have access to untreated garbage of such facility, or material coming in contact with such untreated garbage.

(b) Whenever the Secretary has reason to believe that any person holding a permit to operate a facility to treat garbage in any State has violated this Act or any regulation of the Secretary issued hereunder, the Secretary may, after notice and opportunity for a hearing on the record in accordance with sections 554 and 556 of title 5, United States Code, suspend or revoke such permit. Any person aggrieved by an order of the Secretary issued pursuant to this subsection may, within sixty days after entry of such order, seek review of such order in the appropriate United States court of appeals in accordance with the provisions of sections 2341, 2343 through 2350 of title 28, United States Code, and such court shall have jurisdiction to enjoin, set aside, suspend (in whole or in part), or to determine the validity of the Secretary's order. Judicial review of any such order shall be upon the record upon which the determination and order are based.

(c) The permit of any person to operate a facility to treat garbage in any State shall be automatically revoked, without action of the Secretary, upon the final effective date of the second conviction of such person pursuant to section 7 of this Act of a violation of this Act or the regulations of the Secretary issued hereunder.

CIVIL PENALTIES

SEC. 6. (a) Any person who violates any provision of this Act or any regulation of the Secretary issued hereunder, other than a violation for which a criminal penalty has been imposed under this Act, may be assessed a civil penalty by the Secretary of not more than $10,000 for each such violation. Each offense shall be a separate violation. No penalty shall be assessed unless such person is given notice and opportunity for a hearing on the record before the Secretary in accordance with sections 554 and 556 of title 5, United States Code. The amount of such civil penalty shall be assessed by the Secretary by written order, taking into account the gravity of the violation, degree of culpability, and history of prior offenses; and may be reviewed only as provided in subsection (b) of this section.

(b) The determination and order of the Secretary with respect thereto imposing a civil penalty under this section shall be final and conclusive unless the person against whom such an order is issued files application for judicial review within sixty days after entry of such order in the appropriate United States court of appeals in accordance with the provisions of sections 2341, 2343 through 2350 of title 28, United States Code, and such court shall have jurisdiction to enjoin, set aside, suspend (in whole or in part), or to determine the validity of the Secretary's order. Judicial review of any such order shall be upon the record upon which the determination and order are based.

(c) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate court of appeals has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General, who shall institute a civil action to recover the amount assessed in any appropriate district court of the United States. In such collection action, the validity and appropriateness of the Secretary's order imposing the civil penalty shall not be subject to review.

(d) All penalties collected under authority of this section shall be paid into the Treasury of the United States.

(e) The Secretary may, in his discretion, compromise, modify, or remit, with or without conditions, any civil penalty assessed under this Act.

CRIMINAL PENALTIES

SEC. 7. Whoever willfully violates any provision of this Act or the regulations of the Secretary issued hereunder shall be guilty of a misdemeanor and shall be fined not more than $5,000, or imprisoned not more than one year, or both.

GENERAL ENFORCEMENT PROVISIONS

SEC. 8. (a) The Attorney General, upon the request of the Secretary, shall bring an action to enjoin the violation of, or to compel compliance with, any provision of this Act or any regulation issued by the Secretary hereunder by any person. Such action shall be brought in the appropriate United States district court for the judicial district in which such person resides or transacts business or in which the violation or omission has occurred or is about to occur. Process in such cases may be served in any judicial district wherein the defendant resides or transacts business or wherever the defendant may be found.

(b) The Secretary is authorized, and shall have access at reasonable times, to inspect the books, records, and premises of any person subject to this Act.

COOPERATION WITH STATES

SEC. 9. In order to avoid duplication of functions, facilities, and personnel, and to attain closer coordination and greater effectiveness and economy in administration of this Act and State laws and regulations relating to the feeding of garbage to swine, the Secretary is authorized to enter into cooperative agreements with State departments of agriculture and other State agencies charged with the administration and enforcement of such State laws and regulations and to provide that any such State agency which has adequate authorities, facilities, personnel, and procedures, as determined by the Secretary, may assist the Secretary in the administration and enforcement of this Act and regulations hereunder to the extent and in the manner the Secretary deems appropriate in the public interest. The Secretary is further authorized to coordinate the administration of this Act and regulations with such State laws and regulations wherever feasible: *Provided,* That nothing herein shall affect the jurisdiction of the Secretary under any other Federal law, or any authority to cooperate with State agencies or other agencies or persons under existing provisions of law, or affect any re-

strictions upon such cooperation. To the maximum extent feasible, the Secretary shall allow any State agency with which there is a valid agreement pursuant to this section to assume the primary responsibility for issuing permits pursuant to section 5 of this Act to operate a facility to treat garbage that is to be fed to swine.

REGULATIONS

SEC. 10. The Secretary is authorized to issue such regulations and to require the maintenance of such records as he deems necessary to carry out the provisions of this Act.

AUTHORITY IN ADDITION TO OTHER LAWS; EFFECT ON STATE LAWS

SEC. 11. The authority conferred by this Act shall be in addition to authority conferred by other statutes. Nothing in this Act shall be construed to repeal or supersede any State law prohibiting the feeding of garbage to swine.

AUTHORIZATION OF APPROPRIATIONS

SEC. 12. There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

[From Farm Journal, November 1979]

AFRICAN SWINE FEVER: YOU BETTER HOPE YOU NEVER GET IT

African swine fever could turn your barnyard into a graveyard. It's a highly contagious, usually fatal virus with symptoms almost identical to hog cholera. There's no cure and no hope for an effective vaccine.

Does that sound scary? It should. The virus has killed or caused the destruction of millions of hogs throughout the world.

Hogs infected with acute ASF experience a sharp rise in body temperature and usually die four to seven days later. A day or two before death, body temperature drops and hogs exhibit these signs: depression; weakness in the hind legs; discolorations (redness or bluish-to-reddish blotches) on ears, snout, tail, fetlocks and flanks; labored breathing; bloody feces; incoordination; coughing; and sticky discharge from the eyes.

Acute ASF has a mortality rate of more than 90%. A milder form of the virus has a much lower mortality rate, and hogs that survive remain carriers that can transmit the disease. Important economically, pigs that survive the subacute virus maintain their appetite but gain weight slowly. Another problem: The subacute ASF is much more difficult to diagnose than the highly virulent strains.

U.S. concern about the disease has been growing since ASF resulted in the death of more than 12,000 hogs in Cuba, just 90 miles from the U.S., in 1971. More than 400,000 hogs were killed to ensure successful elimination of the disease.

Until the Cuban outbreak, ASF had never been in the Western Hemisphere. Wild hogs have probably had the disease in Africa for centuries. It was first recognized in domestic hogs in Kenya 70 years ago. After emerging from Africa in 1957, it killed more than 4 million hogs in Europe. In the past year severe outbreaks have been confirmed in Brazil, Haiti and the Dominican Republic.

USDA officials working in the Dominican Republic to help eradicate ASF have returned with grisly stories of the disease's destructive power. H. A. (Mac) McDaniel, a senior USDA veterinarian who has spent much of the last year there studying ASF says, "Of course, a disease break is traumatic for any producer. One that I'll never forget was in a herd owned by a veterinarian, Alfonzo Gomez. It was one of the best, most productive herds I've seen anywhere. His foundation stock was from some of the best herds in the U.S. Sanitation and nutrition were outstanding. Gomez was weaning 20 pigs per sow per year. When ASF hit he had about 2,500 sows and boars and 1,000 suckling pigs.

"As soon as we learned that he had ASF I visited the herd and posted everything that died—100 to 150 head in five or six days. Pregnant sows that didn't die were aborting litters.

"Within four months after ASF hit there wasn't a living hog on the place. Those that hadn't died had been killed. All that remained of his swine operation was a sunken hole where hogs were buried."

When ASF first broke in the southeast region of the Dominican Republic, officials mistakenly diagnosed it as hog cholera. But, when massive doses of hog cholera vaccine failed to stem hog deaths. ASF was suspected. Those suspicions were confirmed at USDA's Plum Island Animal Disease Center in July.

The Dominican government then launched an all-out eradication program including:

Slaughter and burial of all diseased and exposed hogs at outbreak sites and surrounding areas.

Establishment of a national diagnostic laboratory to confirm suspected positive cases.

Compensation of producers for animal losses.

Despite those efforts, the disease continued to spread rapidly until it covered most of the country. The government then shifted to this drastic program:

Gradually slaughter all hogs in the entire eastern region to remove possible sources of infection.

Ban all movement of animals and animal products from this region.

Encourage hog producers to convert to other animal production during a three-month period after hogs are eliminated.

A checking period using government donated hogs to test farms. If the new hogs contract the disease, more cleaning, disinfection and waiting is necessary. If the hogs remain healthy, indicating the disease has been eradicated, repopulation can start.

The eradication program, currently underway, should take about nine months to complete.

Adding insult to injury, ASF struck the Dominican Republic when the industry was expanding rapidly. Government estimates indicate that hog numbers grew from 500,000 in 1971 to 1,500,000 in 1977. Large commercial units constructed in the early 1970s account for most of the expansion.

Prior to the ASF outbreak, a few American firms had merged with local companies and were preparing to process pork for export. Those plans are set back at least five years, according to the most optimistic estimates. Perhaps longer. In fact, some pork imports may be necessary this year.

U.S. farmers can anticipate similar destruction to the hog industry and export markets if ASF reaches this country. Currently, countries which buy our grain require certification that the country is free of Foot and Mouth Disease, rinderpest and contagious pleuro-pneumonia. Also, states must furnish affidavits that they are free of a variety of other diseases such as anthrax and bluetongue.

An ASF break would certainly tighten restrictions and perhaps result in the loss of a big part of the hard-won pork product market. That market totaled $4.5 million in live animals last year year and $22.71 million in meat. Pork also contributed a good share of the $22.2 million processed meats export total.

A good idea of the economic impact of an ASF break comes from a study by veterinarian-economist E. H. McCauley and W. B. Sundquist. One of the practical problems with the diease, they explain, is that ASF and hog cholera are easily confused in the early stages of an outbreak. If positive identification is not made early, a disastrous epidemic could result.

Heavy travel between the U.S. and Carribbean countries that have ASF represents a serious threat. U.S. Customs records show that 415,922 people returned to American airports from the Dominican Republic in 1978, more than 100,000 from Brazil.

Ship traffic between the islands and the U.S. provides another possible source of entry for ASF into this country. International garbage from ships has been identified as the cause of many serious animal disease outbreaks, including the several Foot and Mouth Disease outbreaks in the U.S.

The only pratical way to get rid of ASF, should it reach this country, would be an immediate eradication program. It would call for slaughter and disposal (burial or burning) of all hogs on infected or exposed premises and quarantine. This would be followed by thorough cn-going surveillance.

On the bright side, the USDA probably has the toughest inspection procedures in the world—aimed at keeping ASF and foreign diseases out of the country. A detailed plan of operation has been developed by the USDA that could go into effect within a few hours after an outbreak was identified. And, nearly 200 USDA veterinarians are trained to identify and eradicate foreign animal diseases such as ASF.

To get more information on ASF send a postcard to APHIS Information Service. USDA, Room 1140-S, Washington, D.C. 20250 and ask for a copy of Leaflet No. PA817. It's titled simply "African Swine Fever." It describes the disease and tells specifically what you can do to prevent entry and spread of the deadly virus. Also, a 16 mm movie, "African Swine Fever-hog cholera," is available from regional APHIS offices.

This final word of caution: Don't count on winning a battle against ASF with a bottle and syringe. In spite of a 50-year effort by some of the best scientists in the world, no effective vaccine or treatment has yet been developed. Nor is there any immediate hope that one can be developed. The ASF virus doesn't develop protective antibodies necessary for immunization.

● Mr. McGOVERN. Mr. President, I am today the principal cosponsor of a bill which will regulate the feeding of garbage to swine. A similar bill has been introduced in the other House.

This legislation is currently important, and the need for its adoption is particularly urgent at this time because of the presence of African swine fever (ASF) in the Dominican Republic, Haiti, Brazil, and, possibly, in Cuba. ASF is one of the, if not the most, devastating diseases of hogs. Originating, as the name indicates, in Africa, it began to spread to the rest of the world about 20 years ago; namely, to Spain and Portugal.

It has spread from those countries to several nearby islands and to France on two occasions, and remains firmly established in the Iberian Peninsula. In the late seventies, it spread to Brazil, the Dominican Republic, and Haiti, where it continues to exist. In the Dominican Republic, there is an eradication program, there is no effort to eliminate the disease in Haiti. Therefore, the exodus of Haitians to the United States, and especially to Florida, makes this an especially dangerous time for the disease to spread to the U.S. mainland or Puerto Rico.

The reason why the regulation of garbage feeding in the United States is so important is that this swine disease always seems to spread through the feed-

ing of garbage. In each country where it has appeared, there seems to be solid evidence that the feeding of leftover food, that contained pork, to swine has been the vehicle by which virus of the disease reached susceptible pigs. In addition, garbage feeding can be a major source of spreading other animal diseases, such as foot and mouth disease and hog cholera.

African swine fever occurs in two forms—the acute disease which kills all the pigs that are infected, and the chronic form of the disease. The chronic form of the disease, while not killing as many infected pigs, does have after effects that make it unprofitable to feed and fatten the survivors. Furthermore, the chronically affected pigs, also remain carriers of the disease and spread it to other pigs with which they come in contact.

Recently, the National Pork Producers Council had a study team visit Puerto Rico, the Dominican Republic, and Spain. One of their major conclusions was that increased inspection and regulation of garbage feeding in high risk areas where there are large numbers of international travelers has their strongest support. This bill has their full support, because of the danger of garbage feeding as a means of spreading ASF and other foreign animal diseases.

There is no treatment or vaccine for this disease. Therefore, if it does gain entrance into the United States, the only course open is to eradicate it by slaughtering the infected and exposed swine. Estimates have been made of the cost of eradicating the disease from the United States. A special study of the economic consequences of having ASF in the United States, bringing it under control, and eradicating the disease from the United States, has been made by scientists at the University of Minnesota. They estimate the cost of eliminating the disease, even from a small area, to be $7.3 million. The cost of eradicating the disease from an area like the State of Minnesota would be $151,615,000, according to their study. If the disease would become widespread and if it would take as long as 10 years to eradicate it, the total cost would approximate $5 billion. Part of this cost would be reflected in the increased cost of pork and beef, so that the consumer prices for meat would increase $2 billion for the first year of the disease occurrence.

Export markets would also be adversely affected by the presence of ASF in the United States. The losses in exports of pork would be $1.5 billion if the disease was eradicated in 5 years, but would be $3 billion if it persisted in the United States for 10 years. Some countries are likely to place partial or complete embargoes on other agricultural imports from the United States for fear that these products might carry the disease to their swine.

Fortunately, ASF does not affect human beings, but the economic impact of this disease—as stated in the study made at the University of Minnesota and published in April 1979—on swine producers, meat packers, and consumers, makes it important that Congress consider this proposed legislation at the earliest possible time.

The control of garbage feeding, as specified in this bill, is the best available way of preventing ASF from coming into the United States at this time. The virus causing this disease can live in pork from infected pigs for a long time. Thus, garbage containing scraps of pork from hogs having the disease must be heated to kill the virus before it is fed to hogs. If this is not done ASF is likely to spread. The proposed legislation prohibits the feeding of garbage unless it is treated to kill the virus in accordance with regulations issued by the Secretary of Agriculture. If State law prohibits the feeding of garbage, the State law would prevail. It also provides for the State and Federal Governments to cooperate and coordinate in the enforcement of the State laws and regulations under cooperative agreements.

Therefore, it is not anticipated that there will be a burden of additional Federal regulation and enforcement. The role of the Department shall be to aid and assist the States and allow the State agencies to assume primary responsibility for issuing permits and enforcing this act.

Therefore, Mr. President, I am introducing this extremely important legislation. I am hopeful that we can soon have this bill subject to hearings before the appropriate committee and expeditiously move forward to enactment. To delay is to subject our swine and meat industries to unwarranted risk and devastation. Delay can also subject our consumers to a shortage of one of the most nutritious foods available and concurrent higher prices.●

By Mr. PERCY:

S. 2613. A bill to insure the development and implementation of policies and procedures to encourage interagency cooperation in the efficient and effective use of Federal medical resources, and for other purposes; to the Committee on Governmental Affairs.

FEDERAL INTERAGENCY MEDICAL RESOURCES SHARING AND COORDINATION ACT OF 1980

Mr. PERCY. Mr. President, if Congress is going to succeed in balancing the budget in fiscal year 1981 and beyond without jeopardizing essential services to American citizens, every effort must be made to eliminate waste and inefficiency in Government. For this reason, I am today introducing legislation enabling Federal agencies to share some of the billions of dollars spent on medical facilities, hospitals, equipment, and other resources on an interagency basis. The General Accounting Office estimates that the Federal Government could save hundreds of millions of dollars from this approach.

In a 1978 report, GAO discovered numerous opportunities for increased interagency sharing which were not being implemented for a variety of reasons. For instance, the Federal Government's Public Health Service hospital in Seattle has a spinal chord injury center just 2 miles from a VA hospital that lacks such facilities. In 1 year, the VA transported 19 spinal cord injury patients to California because regulations required patients to be treated within the same agency. At the time of GAO's study, the Seattle VA was planning to construct its own spinal chord injury center just 2 miles from the other facility.

This is not an isolated example. In other studies GAO found that:

Twenty-one million dollars worth of "CAT" scanner equipment was being proposed for Federal purchase without a coordinated Federal approach to planning and use of the equipment.

Federal agencies planned to modernize or establish new cancer treatment capabilities costing about $16 million without coordinating the 23 locations where radiation therapy could be provided more efficiently through interagency sharing.

Local Air Force and VA officials in Tampa agreed to an arrangement where they could share needed radiology services at an annual savings of $120,000. VA officials in Washington rejected the arrangement.

Although the GAO and the executive agencies have found that numerous opportunities for sharing exist, local agency officials are either unaware of such opportunities or are unable to do anything about them because of restrictive agency regulations and policies, conflicting administrative rules, and the lack of a specific legislative mandate for interagency sharing. There are several laws that allow sharing, but none of them require it. And while the agencies have made some progress, all parties agree that there is a need for legislative action.

The bill is not designed to dictate sharing arrangements to the agencies providing direct health care. This would be an ineffective approach. Instead, the bill expesses a legislative mandate for removing the obstacles to sharing and directs the agencies to implement sharing arrangements which they design.

The Secretaries of Defense and Health and Human Resources and the Administrator of the Veterans' Administration—whose agencies provide the bulk of Federal direct health care—would be directed to identify where sharing opportunities exist, prescribe policies and procedures for implementing arrangements, and oversee progress in implementing these arrangements. Much of the discretion for making arrangements, setting reimbursement rates, and insuring that arrangements do not adversely affect the care of primary beneficiaries is left with local agency officials.

The bill also requires agencies to report to Congress periodically on their progress in developing sharing guidelines and their implementation.

Over the years, increasing concern has been expressed in Congress about the rapidly rising costs of medical care for Federal agency beneficiaries. If Congress intends to hold these costs down without adversely affecting the quality of care, we must act to insure that Federal agencies operate in the most efficient and effective manner possible. We can no longer afford to waste mil-

lions of dollars because of Federal inability to coordinate resources.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2613

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Interagency Medical Resources Sharing and Coordination Act of 1980".

FINDINGS AND PURPOSES

SEC. 2. (a) The Congress finds that—

(1) Federal agencies often do not coordinate their activities in order to minimize duplication and underutilization of Federal direct health care facilities;

(2) greater interagency sharing of medical resources may be achieved without a detrimental effect on a providing agency's primary beneficiaries;

(3) currently there are not adequate incentives in the various Federal direct health care delivery systems to encourage maximum interagency use of Federal medical resources; and

(4) Federal agencies should share medical resources and increase coordination to the maximum extent feasible.

(b) It is the purpose of this Act to clarify and expand the authority of Federal direct health care providers in order to facilitate interagency sharing of medical resources.

DEFINITIONS

SEC. 3. As used in this Act, the term—

(1) "direct health care" means any health care provided to an eligible Federal beneficiary in a facility operated by the United States Government, including inpatient care and any type of outpatient treatment, testing, or examination;

(2) "beneficiary" means any individual who is entitled by law to direct health care furnished by the United States Government;

(3) "providing agency" means any Federal executive or military department or establishment having statutory responsibility for the provision of direct health care;

(4) "primary beneficiary" means an individual who is specifically entitled by law to direct health care in the facilities of a particular providing agency; and

(5) "negotiated cost" means the cost determined on a medical service-by-service, hospital-by-hospital basis to be an equitable and consistent charge for the services provided.

INTERAGENCY FEDERAL MEDICAL CARE COORDINATION

SEC. 4. (a) There is hereby established a Federal Interagency Health Resources Committee (hereinafter referred to as the "Committee"). The Committee shall be composed of the Secretary of Defense, the Secretary of Health and Human Services, and the Administrator of Veterans' Affairs. In order to establish a Government-wide policy applicable to Federal direct health care providers with regard to interagency sharing of medical resources, the Committee shall, notwithstanding any other Federal law relating to interagency sharing of medical resources, undertake the following:

(1) Assess the opportunities for interagency sharing of existing health resources by Federal direct health care providers.

(2) Monitor the planning of any additional Federal medical facilities, including the location of new facilities and the acquisition of major new medical equipment, with regard to the impact of such plans on opportunities for interagency sharing.

(3) Review existing Federal direct health care capabilities, including support and administrative services, to identify sharing opportunities that will not adversely affect the quality of care provided.

(4) Prescribe policies and procedures designed to maximize the interagency sharing of Federal medical facilities and services.

(5) Coordinate the establishment of uniform interagency health care policies and procedures for providing agencies and monitor the implementation of such policies and procedures, including policies and procedures for coordinated interagency planning for future development of the Federal direct health care delivery system.

(6) Prescribe guidelines, within 120 days of the date of the enactment of this Act, to directors or commanding officers of health care facilities within the jurisdiction of such Secretaries and such Administrator, to provide for the interagency sharing of medical resources by such health care facilities. Such guidelines shall provide, consistent with the policies and procedures developed under this Act, for the following:

(A) The director or commanding officer of each health care facility within the jurisdiction of the Department of Defense, the Department of Health and Human Services, and the Veterans' Administration shall, whenever possible, enter into interagency cooperative sharing arrangements with other health care facilities of such providing agencies in the same geographic area. Under such arrangements, a primary beneficiary eligible for direct health care in a Federal facility and a Federal beneficiary being provided care under contractual arrangements may receive medical care at a facility of a providing agency.

(B) Services to be shared among Federal health care facilities shall not be limited to specialized medical resources.

(C) Medical resources to be shared shall be negotiated by the directors or commanding officers of the Federal health care facilities entering into an arrangement.

(D) The availability of hospital or medical care to beneficiaries of an agency other than the providing agency shall be on a referral basis, and shall not, as determined by the directors or commanding officers participating in such arrangements, adversely affect care of the providing agency's primary beneficiaries.

(E) The providing agency shall be reimbursed by the agency for whose beneficiary a medical service is provided based on negotiated costs as agreed by the directors or commanding officers of the participating health care facilities.

(F) Reimbursement shall be credited when received by the providing agency to the appropriation from which the medical service was funded, and the reimbursement shall be subsequently allocated to the specific facility that provided the medical service.

(G) Sharing arrangements shall be operative upon agreement of the directors or commanding officers entering into an arrangement unless and until such arrangement has been submitted to each agency headquarters, reviewed, and disapproved. A sharing arrangement shall be disapproved if it is contrary to the best interest of the Federal Government.

(b)(1) In developing policies and procedures, the Committee shall consult with all affected agencies and interested parties.

(2) The joint responsibilities of the Secretary of Defense, the Secretary of Health and Human Services, and the Administrator of Veterans' Affairs under this subsection with regard to uniform direct health care shall not be construed to alter an individual agency's responsibilities with regard to the provision of medical services provided by law.

(c) Providing agencies may request funds from the Congress to acquire the resources necessary to treat beneficiaries of other providing agencies.

(d) Each providing agency shall report to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives on the date 180 days after the date of the enactment of this Act, and annually thereafter, and to the Committees on Appropriations of the Senate and the House of Representatives upon the presentation of such agency's appropriations request each fiscal year, with regard to—

(1) the guidelines prescribed pursuant to subsection (a)(6);

(2) the interagency sharing arrangements entered into by health care facilities of such providing agency;

(3) each providing agency's activities pursuant to cooperative interagency sharing arrangements;

(4) other interagency activities directed toward maximizing the efficient use of Federal health resources during the preceding fiscal year;

(5) the progress of Federal interagency medical resource sharing;

(6) the interagency coordination of Federal health resources planning; and

(7) other major Federal activities to increase interagency sharing of Federal medical resources.

Legislative recommendations may be included in such reports.

MONITORING

SEC. 5. The General Accounting Office shall monitor the progress of the Department of Defense, the Department of Health and Human Services, and the Veterans' Administration with regard to the implementation of this Act, and shall report annually to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives with respect to such progress beginning on the date one year after the date of the enactment of this Act.

By Mr. PRYOR:

S.J. Res. 167. A joint resolution designating May 15, 1980 as "National Nursing Home Residents Day"; to the Committee on the Judiciary.

Mr. PRYOR. Mr. President, today I am introducing a joint resolution which proclaims and authorizes the President to designate May 15, 1980 as "National Nursing Home Residents Day."

The month of May has been officially declared "Older Americans Month" by the President; May 8 has also been set aside as "Senior Citizens Day." Therefore, the joint resolution I am introducing today will follow these actions honoring senior citizens of our States by setting aside another day in May to honor nursing home residents across the country.

Mr. President, there are over 17,000 nursing homes in the country and the elderly make up 86 percent of the nursing home population. That represents over 1 million older Americans. Since it has been estimated that one in five older Americans likely will reside in nursing homes at some time, it is important to acknowledge these citizens who are often isolated from the community. This resolution is a step in the direction to include these nursing home residents in society and to continue to have their expertise utilized in America's community life. We must not continue to shelve away this valuable resource—the older American.

I feel it is time, as we begin the 1980's,

to pause and examine the problems of the aging population. We must acknowledge that we have come to a period in time where the "graying" of America is having a significant effect on our economy and culture and life style as a whole. We need to be aware that as we enter the decade of the eighties, adjustments must be made in programs and in our personal attitudes toward the elderly. The sooner we acknowledge the elderly as a resource instead of a burden, the better this country will fare. It is our responsibility to foster reintegration of these citizens into their community—it is our responsibility to join in support of nursing home residents.

Therefore, Mr. President, I am proud to introduce this joint resolution in the Senate in honor of all nursing home residents with a special day set aside in their behalf. I hope my colleagues in the Senate will support this resolution to establish May 15, 1980, as "National Nursing Home Residents Day."

It is my understanding that the distinguished chairman of the House Select Committee on Aging, Congressman CLAUDE PEPPER, is also introducing this resolution in the House today. I believe it is a most appropriate declaration of our respect and concern for these citizens across the country, and I can think of no better way to help increase the public's awareness of this all too often forgotten segment of our population.

Mr. President, I ask unanimous consent that the joint resolution be printed in the RECORD.

There being no objection, the joint resolution was ordered to be printed in the RECORD, as follows:

S.J. RES. 167

Whereas, the month of May of each year is proclaimed Older Americans Month and May 8, 1980, has been designated by the President as Senior Citizens Day;

Whereas, over 1 million older Americans reside in nursing homes and one in five older Americans likely will reside in nursing homes at some time;

Whereas, nursing home residents have contributed to the growth, development, and progress of this Nation and, as elders, offer a wealth of knowledge and experience;

Whereas, Congress recognizes the importance of the continued participation of these institutionalized senior citizens in the life of our Nation;

Whereas, in an effort to foster reintegration of these citizens into their communities Congress encourages community recognition of and involvement in the lives of nursing home residents and

Whereas, it is appropriate for the American people to join in support of nursing home residents to demonstrate their concern and respect for these citizens: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

That May 15, 1980, is designated as "National Nursing Home Residents Day", a time of renewed recognition, concern, and respect for the Nation's nursing home residents. The President is authorized and requested to issue a proclamation calling upon the people of the United States to observe this day with appropriate ceremonies and activities.

ADDITIONAL COSPONSORS

S. 625

At the request of Mr. WALLOP, the Senator from Nebraska (Mr. EXON) was added as a cosponsor of S. 625, a bill to amend the Federal Mine Safety and Health Amendments Act of 1977 to provide that the provisions of such act shall not apply to stone mining operations or to sand and gravel mining operations.

S. 1843

At the request of Mr. CRANSTON, the Senator from Minnesota (Mr. DURENBERGER) was added as a cosponsor of S. 1843, a bill to provide for Federal support and stimulation of State, local, and community activities to prevent domestic violence and provide immediate shelter and other assistance for victims of domestic violence, for coordination of Federal programs and activities pertaining to domestic violence, and for other purposes.

S. 2283

At the request of Mr. CHAFEE, the Senator from Hawaii (Mr. MATSUNAGA), and the Senator from Wyoming (Mr. SIMPSON) were added as cosponsors of S. 2283, a bill to amend the Internal Revenue Code of 1954 with respect to the income tax treatment of earned income of citizens or residents of the United States earned abroad.

S. 2415

At the request of Mr. PACKWOOD, the Senator from New York (Mr. MOYNIHAN) was added as a cosponsor of S. 2415, a bill to amend the Internal Revenue Code of 1954 to provide for the application of the investment tax credit to property purchased by a person who is engaged in the trade or business of furniture rental or leasing to others.

S. 2417

At the request of Mr. BENTSEN, the Senator from Connecticut (Mr. RIBICOFF), and the Senator from New York (Mr. JAVITS) were added as cosponsors of S. 2417, a bill entitled the "Productivity Improvement Act of 1980."

S. 2521

At the request of Mr. DOLE, the Senator from Colorado (Mr. ARMSTRONG) was added as a cosponsor of S. 2521, a bill to amend the Internal Revenue Code of 1954 to provide more equitable treatment of royalty owners under the crude oil windfall profit tax.

SENATE JOINT RESOLUTION 119

At the request of Mr. BUMPERS, his name was added as a cosponsor of Senate Joint Resolution 119, a joint resolution to authorize the Vietnam Veterans Memorial Fund, Inc. to erect a memorial.

At the request of Mr. MATHIAS, the Senator from Ohio (Mr. METZENBAUM), and the Senator from Maine (Mr. MUSKIE) were added as cosponsors to Senate Joint Resolution 119, supra.

SENATE JOINT RESOLUTION 153

At the request of Mr. BUMPERS, the Senator from Missouri (Mr. EAGLETON) was added as a cosponsor of Senate Joint Resolution 153, joint resolution to freeze Senators' salaries for 3 years.

SENATE JOINT RESOLUTION 159

At the request of Mr. DOLE, the Senator from Colorado (Mr. ARMSTRONG) was added as a cosponsor of Senate Joint Resolution 159, a joint resolution disapproving the action taken by the President under the Trade Expansion Act of 1962 in imposing a fee on imports of petroleum or petroleum products.

SENATE JOINT RESOLUTION 407

At the request of Mr. STEVENS, the Senator from Colorado (Mr. HART), and the Senator from Washington (Mr. MAGNUSON) were added as cosponsors of Senate Joint Resolution 407, a resolution to express the sense of the Senate that it offer its congratulations to Americans who participated in the 2d Olympic winter games for the physically handicapped in Geilo, Norway.

AMENDMENTS SUBMITTED FOR PRINTING

DEPARTMENT OF JUSTICE AUTHORIZATIONS, 1981—S. 2377

AMENDMENT NO. 1722

(Ordered to be printed and referred to the Committee on the Judiciary.)

Mr. BAUCUS (for himself, Mr. COCHRAN, and Mr. KENNEDY) submitted an amendment intended to be proposed by them to S. 2377, a bill to authorize appropriations for the purpose of carrying out the activities of the Department of Justice for fiscal year 1981, and for other purposes.

A STATUTORY CHARTER TO ADDRESS EMPLOYEE MISCONDUCT AT THE DEPARTMENT OF JUSTICE

● Mr. BAUCUS. Mr. President, the proper investigation and handling of misconduct by Government employees should be a high priority of every Federal agency. As the law enforcement arm of Government, the Department of Justice must be particularly committed to pursuing such issues. In my view, however, the existing structure at the Department of Justice does not place enough emphasis on this important area.

In order to handle properly the sensitive issues involved in internal Justice Department investigations, the Department needs a permanent, independent, and respected investigative office. Such an office must be able to demonstrate to the public and to the Congress that it is in control of its own investigations.

The Office of Professional Responsibility (OPR) is currently the office responsible for investigating allegations of Justice Department employee misconduct. Many of the allegations handled by OPR are sensitive and complex and may involve complaints against the highest officials in the Department, such as the Attorney General, the U.S. attorneys, or the FBI. The question is whether OPR is structured to investigate these complaints.

In my view, the Attorney General's recent appointment of a special investigator to oversee the ABSCAM news leaks underscores the Justice Department's failure to make OPR a mechanism to handle problems of employee miscon-

duct. If the Attorney General had a high enough regard for OPR's ability to effectively investigate a sensitive issue of public concern, he would have assigned the ABSCAM leaks investigation to OPR directly, instead of creating a special investigator who reports to OPR. How can the public possibly have confidence in the internal investigations of Justice Department employees if the Attorney General does not respect the office charged with the responsibility for conducting these investigations.

The ABSCAM leaks investigation not only raises questions of the adequacy and stature of OPR, but it also highlights problems inherent in the OPR Counsel's ability to control investigations conducted by Attorney General designees or other special task forces. The OPR Counsel claims that OPR is responsible for the ABSCAM leaks investigation conducted by the special investigator. Yet the OPR Counsel has been unable to control the special investigator's active pursuit of publicity even though such exposure is a violation of OPR policy of maintaining a low and discrete public profile. If the Counsel does not have control over the conduct of the special investigator, how can he maintain OPR control over the intricacies of the ABSCAM leaks investigation?

In response to these concerns, Senators COCHRAN, KENNEDY, and I have submitted an amendment which is intended to give the Office and the Department a structure that would insure confidence in the integrity of the Department. Our proposed amendment to S. 2377, the Department of Justice authorization bill for fiscal 1981 creates a statutory charter for OPR.

Congressman PREYER, who has followed very closely the development of OPR since its creation in 1975, has introduced H.R. 2141. Our amendment is analogous to Congressman PREYER's bill.

On March 13, I chaired a Senate Judiciary Committee hearing on OPR. Testimony at that hearing supported the view that the lack of statutory protection for the Office is a major weakness. Because OPR is established only by Federal regulations, its continued existence cannot be guaranteed. In fact, the Office could easily be abolished or have its powers curtailed simply by changing the regulations. Such changes in the regulations could be initiated by Department officials who are subject to investigation by OPR. How can the public have confidence in the integrity of any investigation performed under such circumstances?

Our amendment creates a permanent OPR statutory charter which protects and increases the powers of the office. Such a charter can only be altered by Congress. Thus, the office would be protected from intervention, the threat of intervention, or the appearance of intervention from Justice Department officials. Under a statutory charter, OPR will become a permanent fixture at the Department of Justice until Congress, not the officials who are subject to investigation, determines changes in the structure are appropriate.

Our hearing highlighted another flaw in the current structure of OPR. The OPR Counsel is appointed by the Attorney General rather than by the President. He is in the position of being appointed by the Attorney General, reporting to the Attorney General, and investigating allegations involving the Attorney General. An additional problem occurs because the Counsel does not have the status of the numerous Presidential appointees within the Department. In fact, the Counsel is in the position of investigating Presidential appointees when his status is inferior to those who are being investigated. Even if investigations of the Attorney General and other Presidential appointees are conducted with independence, questions of integrity and deference will always be raised about such investigations.

Our amendment makes the OPR Counsel a Presidential appointee to be confirmed by the Senate. The Counsel would continue to report directly to the Attorney General, but as a Presidential appointee, the Counsel would be more independent and have the appearance of independence so necessary for public trust in OPR operations. As a Presidential appointee, the OPR Counsel will have the highest possible status.

Another issue discussed at our hearing was the conflict of interest caused by an OPR investigation involving the Attorney General. This conflict surfaced in the OPR investigation of the Attorney General and other Department officials concerning their connection with the "Marston affair" which the OPR Counsel readily admits was "the lousiest incident that OPR has ever gotten involved with." In order to protect the need for independence and to insure a thorough investigation of allegations involving the Attorney General, our amendment provides for the direct reporting to the Congress of any such investigation.

Testimony at our hearing revealed that the Department of Justice has never established adequate standards of discipline which can be uniformly applied throughout the Department. According to the OPR Counsel, there is "a disparate arrangement now, a disparate system, and inequitable application of sanctions or corrective behavior." For example, employees found guilty of comparable violations may be given widely disparate discipline if they are employed in different divisions of the Department. Because of the lack of standards, discipline is even haphazard within the six internal investigation units that report regularly to OPR.

Our amendment charges OPR with the responsibility of formulating disciplinary standards for the Department and it also gives the office the power to monitor the imposition of these standards. Under the amendment, OPR also has the power to recommend both administrative sanctions and prosecution to the appropriate officials. If an OPR disciplinary recommendation is not followed, then the OPR Counsel has the right of appeal to the Attorney General.

OPR must be an independent, strong, active, and highly visible office in order to both properly conduct its investigations and to give the appearance of properly conducting investigations into sensitive Justice Department issues. It must be structured to command the respect of the Department's employees, the Attorney General, the Congress, and most importantly, the public.

Our amendment answers these concerns by providing a statutory charter for OPR which will protect and increase its independence, improve its stature, and preserve the uniqueness of its investigative powers. Our amendment also protects OPR's ability to rely on personnel from other components of the Department such as the FBI, thus enabling the office to remain small, cost effective, and focused on investigation rather than administration.

Mr. President, I ask unanimous consent that the text of the amendment be printed in the RECORD.

There being no objection, the amendment was ordered to be printed in the RECORD, as follows:

AMENDMENT NO. 1722

At the end of the bill, add the following:

TITLE II—DEPARTMENT OF JUSTICE PROFESSIONAL RESPONSIBILITY ACT

SHORT TITLE

SEC. 201. This title may be cited as the "Department of Justice Professional Responsibility Act".

ESTABLISHMENT OF OFFICE OF PROFESSIONAL RESPONSIBILITY

SEC. 202. (a) There is established within the Department of Justice, under the general authority of the Attorney General, an Office of Professional Responsibility (hereinafter referred to as the "Office").

(b) The Office shall be headed by a Counsel appointed by the President, by and with the advice and consent of the Senate. The Counsel shall be subject to the general supervision and direction of the Attorney General, or when appropriate, of the Deputy Attorney General, the Associate Attorney General, or the Solicitor General.

(c) The Attorney General may delegate to the Counsel the functions of any other bureau, office, board, division, commission, or subdivision thereof within the Department of Justice (hereinafter referred to as the "Department") as the Attorney General determines are properly related to the functions of the Office and would, if so delegated, further the purposes of this title.

DUTIES AND FUNCTIONS OF THE OFFICE

SEC. 203. (a) The Counsel shall—

(1) initiate or order, as he deems appropriate, an investigation of any information or allegation relating to the conduct of an employee of the Department that is or may be in violation of a law, a regulation or order of the Department, or any applicable standard of ethics or conduct;

(2) establish a mechanism for receiving and processing requests for investigations made by persons employed by the Department as well as persons outside the Department, and insure the confidentiality of the source and nature of any such request;

(3) prepare or review, as the case may be, any findings and reports filed as the result of an investigation under paragraph (1), and make recommendations to the Attorney General, or when appropriate, to the Deputy Attorney General, the Associate Attorney General, or the Solicitor General, concerning such findings and reports;

(4) in addition to any investigation initiated or ordered under paragraph (1), under-

take any relevant investigation assigned by the Attorney General, or when appropriate, the Deputy Attorney General, the Associate Attorney General, or the Solicitor General, and cooperate as directed with any other organization, task force, or individual that may be assigned by the Attorney General to undertake such an investigation;

(5) establish uniform standards for the conduct of investigations by internal inspection units with such responsibilities;

(6) monitor and evaluate the performance and procedures for investigations conducted by the internal inspection units within the Department;

(7) establish procedures and format guidelines for reporting to the Office by internal inspection units in accordance with section 206(c);

(8) in consultation with the Attorney General and the head of the unit, require procedural changes in the operation of any internal inspection unit;

(9) not later than two years from the date of enactment of this title, establish uniform standards for the administration of disciplinary sanctions for each bureau, office, board, division, commission, or subdivision thereof;

(10) monitor and evaluate the implementation of the standards established under paragraph (9) for the administration of disciplinary sanctions;

(11) undertake any other appropriate responsibilities assigned by the Attorney General, including responsibilities relating to the improvement of the ethics and conduct of Department personnel;

(12) submit recommendations to the Attorney General, or when appropriate, to the Deputy Attorney General, the Associate Attorney General, or the Solicitor General, on the need for changes in the standards and procedures that become evident during the course of implementing responsibilities under this title; and

(13) report annually to Congress in accordance with section 207.

(b) The Counsel shall establish such rules as may be necessary to carry out the provisions of this title.

SANCTIONS

SEC. 204. (a) The Counsel may, on the basis of any findings reported to him, or an investigation conducted by him—

(1) recommend to the Attorney General or any appropriate supervising official within the Department that administrative sanctions be taken against a Department employee; and

(2) recommend the prosecution of a Department employee to the appropriate Assistant Attorney General of a division or the appropriate United States Attorney.

(b) If the Counsel makes a recommendation under subsection (a) to any Department official other than the Attorney General, and that official declines to implement the recommendation, the declining official shall report in writing to the Counsel within 30 days of the receipt of the recommendation, the reason for declining to prosecute or administer such sanctions. If the Council disagrees with the position of the declining official, the Counsel may appeal to the Attorney General for implementation.

(c)(1) If the Counsel makes a recommendation under subsection (a) to the Attorney General, the Attorney General shall report in writing to the Counsel within 30 days of the receipt of the recommendation, his proposed action on the recommendation.

(2) Any recommendation by the Counsel to the Attorney General or to a declining official which is not followed by the Attorney General shall be identified in the annual report to Congress under section 207.

ADMINISTRATION PROVISIONS

SEC. 205. (a) The Counsel shall be compensated at a rate equal to the rate of basic pay for ES–5 of the Senior Executive Schedule established by the President under section 5382 of title 5, United States Code.

(b) The Counsel is authorized to appoint such additional staff personnel as he deems necessary, at rates not in excess of the maximum rate for GS–18 of the General Schedule under section 5332 of title 5, United States Code, and may procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5, United States Code.

(c) Under request of the Counsel and in consultation with the Attorney General and the head of the unit to which the employee is regularly assigned, an employee of the Department may be assigned to the Office on a case-by-case basis to perform such duties as are designated by the Counsel. Employees assigned to the Office shall work under the direction of the Counsel.

RESPONSIBILITIES WITHIN THE DEPARTMENT

SEC. 206. (a) The internal inspection units within each bureau, office, board, division, commission, or subdivision thereof, of the Department of Justice shall retain the primary responsibility for receiving information on allegations concerning employees within their respective entities, and for conducting investigations, subject to the reporting requirements of subsection (c) of this section.

(b) The heads of each bureau, office, board, division, commission, or subdivision thereof shall provide information and assistance requested by the Counsel in connection with any investigation conducted by the Office or an internal inspection unit, and by any other person assigned to conduct an investigation.

(c) The head of each internal inspection unit shall report monthly to the Counsel. Each report shall include notification of initiation of any investigation, and shall conform with the procedures and format guidelines established by the Counsel under section 203(a).

REPORT TO CONGRESS

SEC. 207. (a) On or before September 30th of each year, the Counsel shall report to the Congress on the number and a brief description of each allegation of employee misconduct received by the Office, a description of the manner in which such allegation was handled, and the final disposition of each such allegation. The information required under the preceding sentence shall include an identification with respect to the unit or Office which received the allegation and performed the investigation, if any.

(b) In addition, the Counsel shall include in such report—

(1) a description of any significant problems, abuses, and deficiencies in the policies and procedures which have become evident during the course of any investigation;

(2) a recommendation for action that may be taken by the Office or by a bureau, office, board, division, commission, or subdivision thereof to correct such problems, abuses, or deficiencies;

(3) a summary of the recommendations submitted in any previous annual report under this section upon which corrective action has not been completed, with an explanation of the reasons action has not been completed; and

(4) a description of any recommendation for administrative sanctions or prosecution made under section 204(c) by the Counsel to the Attorney General or a declining official which is not followed.

(c) If the Counsel conducts, or orders to be conducted, an investigation of information or an allegation that the Attorney General may be in violation of a law, a regulation or order of the Department, or of any applicable standard of ethics or conduct, he shall report the findings of his investigation to the Committees on the Judiciary of the House of Representatives and the Senate upon the completion of the investigation.

(d) No later than three years from the date of enactment of this title, the Counsel shall submit to the Committees on the Judiciary of the House of Representatives and the Senate—

(1) an evaluation of the procedures and standards for administrative sanctions and prosecution established under sections 203(a)(9) and 204;

(2) a comprehensive evaluation of the implementation of the provisions of this title; and

(3) specific legislative recommendations designed to remedy any problems or deficiencies in the implementation of the provisions of this title.

APPROPRIATIONS

SEC. 208. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this title.●

NOTICES OF HEARINGS

SUBCOMMITTEE ON SECURITIES

● Mr. SARBANES. Mr. President, the Subcommittee on Securities, of the Committee on Banking, Housing and Urban Affairs will hold a hearing on April 29, 1980, in room 5302, beginning at 10 a.m. to receive testimony on general issues and specific legislation involving the Federal securities laws and capital formation by small business. The specific measures currently pending before the subcommittee are S. 1940 and S. 1533, although witnesses are encouraged and expected to comment on other legislative possibilities involving the securities laws.

This will be the first day in a series of hearings which will be continued next month. Anyone requiring additional information concerning these hearings should contact Howard Menell of the committee staff at 224–7391.●

COMMITTEE ON ENERGY AND NATURAL RESOURCES

● Mr. JACKSON. Mr. President, I would like to announce that the Committee on Energy and Natural Resources will begin its second phase of hearings on the geopolitics of oil on Tuesday, April 29, with a hearing on U.S. defense policies as they relate to our energy security. Prof. Henry Rowen, of Stanford University, and Prof. Geoffrey Kemp, of the Fletcher School of Law and Diplomacy, will be the witnesses. The hearing will begin at 9:30 a.m., in room 3110, Dirksen Senate Office Building.

On May 1, the committee will examine U.S. policy toward energy development in the People's Republic of China. The committee will examine the prospects for expanding Chinese oil production and alternative policies for encouraging exploration and development of China's hydrocarbon resources. Prof. Dwight Perkins, of Harvard, and James Lilley will be the witnesses. The hearing will begin at 9:30 a.m., in room 3110, Dirksen Senate Office Building.

For further information concerning

the committee's hearings on the geopolitics of oil, contact James Pugash, staff counsel, at (202) 224–0611.●

SUBCOMMITTEE ON ANTITRUST, MONOPOLY, AND BUSINESS RIGHTS

● Mr. METZENBAUM. Mr. President, the Judiciary Subcommittee on Antitrust, Monopoly, and Business Rights will hold a hearing on S. 2477, the Nondiscrimination in Insurance Act, on April 30, 1980. The hearing will begin at 10 a.m., in room 6226, of the Dirksen Senate Office Building.●

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BAYH. Mr. President, on behalf of the majority leader, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate today, to hold a markup session on legislation to establish competitive oil and gas leasing in favorable areas within producing geologic provinces.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. BAYH. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate today, beginning at 10, to hear Government and non-Government witnesses on the fiscal year 1981 foreign assistance request.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON PARKS, RECREATION AND RENEWABLE RESOURCES

Mr. BAYH. Mr. President, I ask unanimous consent that the Parks, Recreation and Renewable Resources Subcommittee of the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate today, beginning at 2 p.m., to hold a hearing on S. 2551, legislation to establish the Big Sur Coast National Scenic Area.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works be authorized to meet during the session of the Senate today beginning at 2 p.m., to hold an oversight hearing on the animal damage control program of the Fish and Wildlife Service.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

ANNIVERSARY OF THE ESTABLISHMENT OF THE REPUBLIC OF LITHUANIA

● Mr. DECONCINI. Mr. President, I am proud today to join with Americans of Lithuanian descent in commemorating the 62d anniversary of the establishment of the Republic of Lithuania and the 729th anniversary of the formation of the Lithuanian State in 1251.

Despite the annual celebration of the establishment of the Lithuanian State, Lithuanians today are not free and independent. They now daily risk, and often sacrifice, their lives in defiance of the Soviet regime that was imposed upon them in June 1940 when the Soviet Union invaded, occupied, and subsequently annexed the Lithuanian nation. In this era of cries for human rights, the Lithuanian people and their struggle must not be ignored.

The desire of the citizens of the Baltic States for national independence remains strong despite efforts by the Soviet Union to destroy the Baltic peoples as distinct cultural, geographical, ethnic, and political entities through dispersions and deportations to Siberia, replacing them with ethnic Russians.

All the peoples of the Baltic States are entitled to equal rights and self-determination as set forth in principle VIII of the Helsinki Final Act and should be allowed to hold free elections conducted under the auspices of the United Nations after the withdrawal of all Soviet military forces and political, administrative, and police personnel from the Baltic States.

In an attempt to reach this end the United States has consistently refused to recognize and must continue to refuse to recognize the unlawful Soviet occupation of the Baltic States. In addition, the United States as it has in the past must continue to maintain diplomatic relations with representatives of the independent Republics of Lithuania, Latvia, and Estonia.

Mr. President, at this time I ask that the resolution drafted by the American Lithuanian community in Phoenix, Ariz., be printed in the RECORD.

The resolution follows:

RESOLUTION

We, Lithuanian-Americans of Phoenix, Arizona, at a meeting held on February 24th, 1980 to commemorate the 62nd anniversary of the establishment of the independent state of Lithuania on February 16, 1980 and the 729th anniversary of the formation of the Lithuanian Kingdom in the year 1251, send our warmest greetings to the people of Soviet-occupied Lithuania, pledge our unwavering support for the restoration of Lithuania's sovereignty and unanimously adopt the following resolution:

Whereas, in 1918, the independent state of Lithuania was reestablished by the free exercise of the right of self-determination of the Lithuanian people; and

Whereas, by the Peace Treaty of July 12, 1920, Soviet Russia officially recognized the sovereignty and independence of Lithuania and voluntarily renounced forever all claims to Lithuanian soil and her people; and

Whereas, until 1940, Lithuania was a sovereign nation, a member of the League of Nations and a signatory of numerous international treaties with the Soviet Union; and

Whereas, the Soviet Union, during the period of June 15, to June 17, 1940, invaded and occupied Lithuania and subsequent to that invasion forcibly annexed the Lithuanian nation into the Soviet Union; and

Whereas, the Soviet Union continues to conduct a policy of colonization, forced Russification, ethnic dilution, and religious and political persecution; and

Whereas, the people of Lithuania to this day are risking and sacrificing their lives in defiance of the Soviet regime, as recently made evident by the numerous arrests of the members of Lithuanian Helsinki Monitoring Group, signers of the August 23, 1979 petition to the Secretary General of the United Nations and publishers of "The Chronicle of the Catholic Church in Lithuania" and other dissident publications; and

Whereas, the United States government maintains diplomatic relations with the government of the Free Republic of Lithuania and consistently has refused to recognize the unlawful occupation and forced incorporation of this freedom-loving country into the Soviet Union; and

Whereas, the 89th Congress of the United States unanimously passed House Concurrent Resolution 416 urging the President to raise the question of the Baltic nations' status at the United Nations and at other international forums; and

Whereas, the 96th Congress of the United States unanimously passed House Concurrent Resolution 200 and Senate Concurrent Resolution 54 expressing the sense of the Congress with respect to the independence of the Baltic States and with respect to Soviet claims of citizenship over certain United States citizens; now, therefore

Be it resolved, that we, Lithuanian-Americans, will urge our representatives in Congress to sponsor and adopt H.R. 5407, recently introduced into the 96th Congress, authorizing continuing appropriations for the Lithuanian Legation in the United States and providing for continued diplomatic representatives; and, further,

Be it resolved, that copies of this resolution be forwarded to the President of the United States, the Secretary of State, the United States Ambassador to the United Nations, the United States Senators, members of the U.S. House of Representatives, the Lithuanian Minister in Washington, D.C., the Lithuanian Consuls in New York City, Chicago and Los Angeles, and to all appropriate representatives of the press.●

GEORGIA O'KEEFFE—PORTRAIT OF AN ARTIST

● Mr. DOMENICI. Mr. President, Rocky Mountain magazine recently carried a portion of the first biography of Georgia O'Keeffe entitled "Georgia O'Keeffe: Portrait of an Artist" written by Laurie Lisle. I ask that this short preface be included in the RECORD as a morsel to encourage the reading of the article and the book. It also emphasizes the relationship of New Mexico to her work which New Mexico intends to preserve through enactment of S. 2363, authorizing the establishment of the Georgia O'Keeffe National Historic Site.

The article follows:

PUBLIC NOTES ON A PRIVATE LIFE

This excerpt is part of a book that had its genesis in 1970 when I went to a retrospective of Georgia O'Keeffe's paintings at the Whitney Museum of American Art in New York. There, four floors above the cacophony of the city, her images of skulls floating in spacious, serene desert skies, of blossoms of mysterious depth in brilliant hues, spoke to me of a world larger and more beautiful than the one I knew.

My curiosity was aroused: who was the creator of these powerful paintings? When I tried to find out, I was astonished to discover that no book existed to answer my questions. My curiosity took me to the Beinecke Rare Book and Manuscript Library at Yale University, which has many of O'Keeffe's letters. As I pored over her words, written in a script composed of distinctive culicues and wavy flourishes, their intensity seemed to vibrate off the paper and transmit a vigorous jolt, the way her paintings did. I realized that her story was not only one of a gifted artist, but also one of a forceful

woman with extraordinary qualities of intellect and character—and it was a story that I wanted to tell.

I set off on an odyssey that eventually took me to 24 states, dozens of libraries and museums and resulted in more than 100 interviews with O'Keeffe's family and friends. In San Francisco, for example, I interviewed Blanche Matthias, born the same year as O'Keeffe, and her friend since the early Twenties. Many others who graciously and freely shared their memories and insights asked that I not reveal their names.

I learned that O'Keeffe's marriage to the famous photographer, Alfred Stieglitz, was of central importance to her. It was he who first exhibited her work in his gallery in 1916 and continued to do so until his death 30 years later. I discovered that their relationship took many turns from their first passionate attraction through intense struggles to a mutual commitment to art.

To learn about the region that has played so visible a role in her paintings, I stayed at the Presbyterian conference center near O'Keeffe's Ghost Ranch home in her isolated corner of northern New Mexico. I hiked up mesas she had climbed many times to view the majestic valley she calls her own. When I drove the 16 miles to the village of Abiquiu, where she has another home, I parked my car where the road provides an overview of the muddy, pink Chama River that greens her dramatic dry landscape. I danced to Latin music with her Spanish-American neighbors in a gym that was her gift to the village.

My portrait of the artist—the evolution of a Wisconsin farmer's daughter nicknamed Georgie into the matriarch of modern art known as O'Keeffe—was written with the hope that others might be moved by the example of her courageous, independent and successful life.●

AIRLINE DEREGULATION

● Mr. CANNON. Mr. President, I submit for the RECORD two editorials which appeared in the Washington Post and the San Francisco Chronicle. They are recent tributes to airline deregulation from both the east coast and the west coast.

The articles follow:

[From the Washington Post, Apr. 23, 1980]

DEREGULATION IN THE SKY

Remember the horror stories that were trotted out when airline deregulation was proposed? There would be higher fares, skimpier service and a rash of accidents as well as bankruptcies—or so opponents of the idea warned. Now, a year after deregulation, what do we have? None of the above. What we have are game cards.

Those cards are this spring's version of the airlines' effort to adjust to a world of competition. If you get the right card, the symbols underneath the horrid stuff that has to be scraped off will reward you with anything from a free drink to a free trip. On one airline, even the losing cards can be entered in a drawing for the super prize—a free round trip for two, once a year for the rest of the winner's life, to any place the airline flies.

The airlines, as this kind of competition suggests, are alive and well. They are battling hard for customers, just as the grocery stores are with their current coupon war. The warnings have not come true. Eighteen months after President Carter signed the deregulation bill, the biggest economic danger to the airlines comes from the rising cost of fuel, not from reckless and predatory competition. Average fares have risen considerably less than the cost of living, service is up on some routes although down on others, the safety record remains good, and no one has gone bankrupt.

The answers aren't all in, of course, and won't be for several years. But the early evidence suggests that deregulation is going to work out well. There will be more changes in the transportation network—the big airlines may be replaced by smaller, commuter lines in more small cities and there may be more mergers. But the chances of a return to a fully regulated industry are almost nil.

The importance of this is that Congress is now trying to decide whether to deregulate two more industries—the trucks and the railroads. The three industries are not fully comparable—the airlines, alone among them, transport primarily people—but the principles are quite similar. That's why some of the trucking companies have been trying to convince Congress that airline deregulation has been a disaster.

They were unsuccessful in the Senate, where a strong trucking deregulation bill was passed despite predictions—like those made five years ago about the airlines—that it will mean higher rates and lower service. They should also be unsuccessful in the House. Those game cards and the current cut-rate air fares to Florida and the West Coast are not evidence of a collapsing industry—but rather of a vigorously competitive market.

[From the San Francisco (Calif.) Chronicle, Mar. 31, 1980]

THE SKY COULD BE THE LIMIT

If you remember the fight which preceded the deregulation of the airline industry, then you remember that the opponents of deregulation insisted that the process would strip small communities of service.

Sure, said deregulation opponents, lifting the regulatory burden from commercial carriers might mean cheaper, more frequent flights—from one city to another. But the little guys would be hurt. The little towns would be shut out. And a smaller city, like California's Bakersfield, would be isolated from the rest of the state, as it would no longer be profitable (not to mention *mandatory*) for carriers to service a community of that size.

It seemed a compelling argument at the time.

But the fact is that when the Airline Deregulation Act became law in 1978, Bakersfield was served by four daily flights to L.A., three to San Francisco and one to Las Vegas. Now, two years after deregulation, Bakersfield has no fewer than 12 daily flights to Los Angeles, eight to San Francisco, three to Las Vegas—and new commuter flights have been initiated to Sacramento and Oakland.

Simultaneously, deregulation has given commercial carriers the scheduling flexibility needed to cut costs. As a result, the average number of hours that aircraft are in flight has risen sharply since deregulation, as has the percentage of seats filled per flight. What that means is that ticket prices increased only 16 percent last year, in spite of 100 percent increases in fuel cost and overall industry cost increases of 29 percent.

So if you're wondering what deregulation has done for the commercial airline industry, the answer is simple. While it's not without its problems, deregulation has surely helped the industry survive cripping cost increases, while offering the public cheaper and more comprehensive service.

And practically all the government had to do was get out of the way, stand way back . . . and watch the take-off!●

U.S. ALLIES' CONTRIBUTION TO WORLD SECURITY

● Mr. PRESSLER. Mr. President, I recently offered two amendments to the first concurrent budget resolution to reduce the international affairs, amendment No. 1701, and the national defense, amendment No. 1702, functions. My intention in offering these amendments is to drive home the point that our allies must carry a larger share of the burdens of world security and development.

The purpose of amendment No. 1702 is, specifically, to decrease the U.S. share of U.S. base operating support costs in Japan and the European NATO nations. Our prosperous NATO and Japanese allies should assume more of our base operating support costs in their countries. The amendment would have these nations absorb more of these costs.

Mr. President, I noted strong allied support for higher defense efforts by U.S. allies while attending the 80-nation Interparliamentary Union meeting in Oslo, Norway, and the Ditchley Foundation's annual legislators' conference on NATO's future held at Ditchley Park, England, during the Senate's Easter recess. Administration bilateral consultations with the allies should be able to produce revised status-of-forces agreements on this change for the following reasons:

First. The allies have not been as supportive of U.S. policy toward the Soviet Union and Iran as we would like. Yet there are indications that they are seeking ways to support us through other suitable actions, and not mere rhetoric, which do not compromise their respective definitions of their own national interests. This amendment would make available to them an affordable and significantly useful demonstration of allied unity and resolve vis-a-vis Soviet imperialism, the Iranian violation of international law, and the clear need to strengthen allied defense efforts.

Second. U.S. defense spending as a percentage of GNP is now about 5 percent, greatly exceeding Japan (0.9 percent) and the NATO average of 3.5 percent of GNP. Yet GNP per capita of several of these countries approximates or even exceeds U.S. GNP per capita. Thus, they can afford to commit larger amounts to mutual defense efforts which protect their interests as much as our own.

Third. The Budget Committee recommendation provides for an increase in national defense of $38 billion over actual fiscal year 1979 spending and $21.7 billion over estimated fiscal year 1980 spending. The increase from fiscal year 1980 to the fiscal year 1981 recommended level is 5.7 percent in real growth terms, exceeding the 5-percent real growth target commitment made last year by many Senators, including me. It also far exceeds the now unrealistically low 1977 NATO alliance commitment to a 3-percent real growth. Thus, my proposed reduction of $200 million would still leave a defense outlay of $155.5 billion, real growth of over 5 percent, and nominal growth of over 16 percent.

Fourth. Adoption of the amendment would establish a specific U.S. target for the allies which could make it easier for their national leaders to persuade their respective publics that the 3 percent NATO defense real growth commitment must be met or exceeded.

My preference would be to transfer the $200 million from Japan and NATO base operating support costs to other

operations and maintenance needs within the defense budget, rather than reduce the functional total by that amount. However, Senate floor procedure on the budget resolution will not permit such an intrafunctional transfer. I would prefer to see even more than an additional $200 million go into the reduction of the huge backlog of base maintenance and repair needs at U.S. Air Force and other military installations within the United States.

The condition of many of our bases here at home will reach slipshod proportions if a significant infusion of maintenance and repair funds is not made during the next fiscal year and following years. Our allies can afford to absorb $200 million more in base operating support costs in fiscal year 1981, and progressively more in future years.

Mr. President, a recent article in the April 28 issue of U.S. News & World Report presents a fine analysis of this subject. For the benefit of those Members who wish to further study this issue, I ask that this article, together with accompanying figures signifying who bears the defense burden, be printed in the RECORD.

The material follows:

SHOWDOWN TIME FOR WESTERN ALLIANCE

Embedded in the current controversy between the U.S. and its European and Japanese allies are the seeds of a major crisis in the Western Alliance.

At stake is more than the question of how the allies respond to President Carter's call for support for economic sanctions against Iran and a boycott of the Moscow Olympics.

At the heart of the crisis, as veteran diplomats see it, are fundamental disagreements among the U.S. and its allies, compounded by a loss of confidence in Carter's leadership.

No one is predicting the imminent breakup of the alliance, but a top administration policymaker warns of two dangers if the present slide into crisis continues unchecked. One is a possible isolationist backlash in the U.S. The other is the "Finlandization" of Western Europe, a growing tendency by allied governments to defer to Moscow.

The basic issue between Washington and its allies: A U.S. attempt to reshape the alliance by mobilizing key members of the North Atlantic Treaty Organization and Japan in the defense of Persian Gulf oil. In the past, NATO members have resisted efforts to extend collective-security responsibilities beyond Western Europe.

A showdown is shaping up as the U.S. presses the European allies to make a bigger contribution toward the defense of the Persian Gulf region—indirectly by relieving the U.S. of some of the NATO defense burden and directly by providing greater aid and military involvement in the area as well as taking a firmer stand against Russia.

Almost by accident, this coincides with what Washington considers a test of alliance solidarity posed by the hostage crisis with Iran.

The Carter administration, on its side, has complained that the allies were loath to join the U.S. in a concerted response to the Soviet move into Afghanistan, which Washington views as a serious threat to Persian Gulf oil.

White House officials also privately have grumbled about allied reluctance to demonstrate unity by supporting the U.S. in the confrontation with Iran.

The undercurrent of resentment toward allies that is apparent in the White House was reflected in this comment by the President himself: "Nations ask us for leadership, but at the same time they demand their own independence of action. . . . Some ask for protection, but are wary of the obligations of alliance."

ALLIES' VIEW

The European and Japanese allies, on their side, complain that Carter is following the wrong strategy in dealing with Russia and that he is exaggerating the threat to Persian Gulf oil posed by the Soviet invasion of Afghanistan. Too, they maintain that, in the face-off with Iran, the President is pursuing a potentially disastrous policy that is inspired mainly by domestic political considerations.

In the end, most if not all the allies may join Washington—reluctantly—in applying economic and diplomatic sanctions against Iran. Not, they stress, because they consider these moves effective but rather to forestall what they regard as dangerous U.S. military measures threatened by the White House.

Who Bears The Defense Burden: Military spending by U.S. and its allies, as a share of national output

	Percent
U.S.	5.0
Great Britain	4.7
Turkey	4.5
Belgium	3.5
West Germany	3.4
France	3.3
Netherlands	3.3
Norway	3.2
Portugal	2.8
Denmark	2.4
Italy	2.4
Canada	1.8
Japan	0.9

APPLYING A BRAKE

In the words of the prestigious London *Times:* "If the alliance does not support a tougher policy, his [Carter's] own policy will become tougher still. It is therefore obvious that the alliance will have to go some way with him if only to hang onto his coattails."

What the allies fear is a U.S. naval blockade of Iran, which Carter has hinted could come soon if other sanctions fail to secure the release of the captive Americans.

Says a British diplomat who specializes in strategic policy: "An American military move in an area as combustible as the Persian Gulf could set off a chain of events like those that led to two world wars in this century."

The widely publicized strains caused by the hostage crisis are overshadowing more basic differences in the alliance stemming from the Soviet invasion of Afghanistan. Despite its remoteness from Europe and Japan, the Russian move is seen by U.S. officials as a grave potential threat to the Western Alliance.

For one thing, it marks the first use of Soviet military forces outside of Moscow's Communist empire since World War II.

Further: American officials believe there is now a greater danger to Persian Gulf oil, which is vital to Western security. The danger is compounded by evidence that Russia by the mid-1980s may be transformed from a major oil exporter into an importer.

Although worried by the Soviet takeover of Afghanistan, this country's allies, with few exceptions, are unwilling to join the U.S. in imposing economic or other sanctions against the Soviet Union—beyond a possible boycott of the Moscow Olympics.

Most of the allies seem torn between a desire to preserve the benefits of détenté and at the same time maintain close defense ties with the U.S.

Their ambivalence is reflected most dramatically in the behavior of West German Chancellor Helmut Schmidt, who has frequently criticized Carter for vacillation in foreign policy.

Immediately after endorsing an Olympic boycott, Schmidt in mid-April made an extraordinary gesture of conciliation toward Russia. He offered in effect, to repudiate a German-backed NATO agreement to deploy long-range nuclear missiles in Europe as a counter to the Soviet missile buildup in Eastern Europe. He also expressed a desire to go to Moscow to meet with Soviet President Leonid Brezhnev.

WHAT SURVEY SHOWED

Another sign of Europe's ambivalence toward the U.S. in the wake of Russia's invasion of Afghanistan: A recent Gallup Poll that shows a substantial majority of Britons and Germans consider U.S. military support as essential to their security and way of life but oppose stronger support for America against the Soviet Union.

The danger that this free-ride mentality poses for the alliance is summed up by former Secretary of State Henry Kissinger: "The Western Alliance will surely be jeopardized by the new theory of 'division of labor' by which the Europeans seek to retain the benefits of a relaxation of tensions while we assume all the burdens and risks of resisting Soviet expansionism." ●

TEWA INDIAN POTTER MARIA MARTINEZ

● Mr. DOMENICI. Mr. President, Tewa Indian potter Maria Martinez is world renowned as a native American potter. Kathleen Hinton-Braaten of the Christian Science Monitor recently visited the San Ildefonso Pueblo, N. Mex., and filed the following story which I ask be printed in the RECORD.

The article follows:

SAN ILDEFONSO PUEBLO, N.M.—The plaza of northern Mexico's San Ildefonso Pueblo is surrounded by low adobe structures. In this tiny village a Tewa Indian potter, Maria Martinez, easily the most famous of all native American potters, lives here with her son Adam and his wife, Santana.

Maria Martinez, whose career spans most of this century, is frail yet vibrant, her trembling voice sometimes lilting upward with startling joy. With graying hair knotted behind with purple yarn, strands of red and white beads contrasting with her dress's turquoise print, she is handsome still, her artist's sense of color and design still as apparent as in her younger days.

Mrs. Martinez is a legend, the recipient of numerous medals, awards, and honorary degrees. She has been the subject of films, a guest at the White House, and hostess to First ladies.

Early in this century, Mrs. Martinez, with her late husband, Julian, achieved a lasting fame by developing a striking "black on black" pottery. Gradually swept up by an impressed Anglo art world, she became known for "the magnificence of the shape and technical execution of her work—her wonderful eye for form and symmetry." Black-on-black pottery featured dull, dusky designs against a fiercely glowing background. Mr. Martinez painted the designs.

Their accomplishment was not negligible. Its success has enabled San Ildefonso to survive, not only reviving pottery as a craft, but resurrecting a pueblo community that was almost dying from economic problems, disease, and persistent difficulties with an Anglo government.

Today San Ildefonso's population has quadrupled and the market for pottery so expanded that a splendid storage jar by Mr. Martinez—once traded for a shawl worth $21.50—is now valued at more than $10,000.

The Maria and Julian Martinez style of pottery—widely duplicated throughout the pueblo and now considered as typical of San Ildefonso ware—is an amalgamation of tradition and innovation. Glossy from polishing

and not from glazes, painted with yucca brushes as well as Japanese brushes; fired in the open (the blaze fed by cow chips and cedar), this pottery reflects habits of centuries of Indian craftsmen.

In essence, however, it is pottery for Anglos. The technique of smothering the fire to achieve the rich black color has meant temperatures too low for watertightness—no problem for "art," but certainly a problem for use. And usefulness was once a standard for an Indian potter.

The exquisite designs, though Indian in origin, are used as decoration and not as symbol. Pottery used for sacred purposes is kept hidden from the non-Indian eye. The pottery is no less beautiful because of these concessions to the marketplace, and without these concessions it would not be sold.

As Mrs. Martinez greets visitors today, she successfully belies her complex and difficult past, a past that has included the loss of her husband (in 1943) and three of her sons, as well as family and pueblo conflicts. Proud and serene, she has an honest dignity. Her legacy is the founding of an artistic dynasty.

The home Maria shares with son Adam and Santana is a center of creativity. Though Adam, a kindly man with features reminiscent of his handsome father, Julian, is not a potter, he is intimately involved in securing and preparing special clays and in the delicate process of firing the pots. His wife is a superb craftsman in her own right, only a natural shyness making her less a public figure than Maria.

There are five generations of potters in the family, and though Maria's son Popovi Da—Adam's brother—passed on in 1971, he was Maria's collaborator for 15 years, and his son, Tony Dá, is both a gifted potter and painter. Adam and Santana's daughter Anita is a potter as well, as is her daughter Barbara Pinto Gonzales. Mrs. Gonzales is an inventive artist who teaches the "Maria Martinez Method" in workshops throughout the country; her young sons, Cavan and Aaron, have begun to work with clay as well.

Maria Martinez's dynasty actually goes far beyond her family and includes an entire pueblo, with many potters who have learned their skills at her side. There are perhaps other potters whose gifts have equaled hers but who have not gained international recognition. Mrs. Martinez earned celebrity by adding personal grace and strength to her artistic attributes.

Generous, joyous, and only mildly vain, she has been an inspiration to both Anglos and Indians. Peggy Pond Church, who grew up near San Ildefonso Pueblo, once wrote in a journal of "Maria of Ildefonso": "Her home was the first Indian house I ever entered. Cool and immaculate, fragrant with the sweet smell of burning pinon and frying tortillas, warm with welcome to whoever came, whether friends or curious strangers. She is a truly great artist whose work has become the standard of excellence throughout the Pueblos." ●

FRAUD IN SOCIAL SECURITY DATA

● Mr. GOLDWATER. Mr. President, in what has become an annual ritual, the media has published lies about the bill I and other Senators have introduced to repeal the earnings test of social security for older persons beginning in 1983.

What happens is this: The Social Security Administration issues two sets of costs estimates on repeal of the earnings test. One is a figure for the bill I actually introduced. The other is a very high figure for a bill no one in the Senate has proposed. The media invariably pounces on the higher figure.

Sure enough the same thing happened again this year. On Monday, Senators DECONCINI, PRESSLER, JEPSEN, and I presented joint testimony before the Senate Subcommittee on Social Security regarding legislation we have introduced to eliminate the earnings test at age 65. Our bill, S. 1287, is sponsored by 20 Senators.

The bill protects the investment made by older persons during their working careers. It guarantees that when they reach age 65, the normal age for entitlement to full benefits, they will get a return, without penalty, on the social security payroll taxes they and their employers have paid into the system.

The Chief Actuary of Social Security gave me a written report estimating that the maximum cost of the proposal in 1983 would be $2.1 billion. Mr. Foster of his office today reconfirmed that figure in a telephone conversation with my staff.

Other Social Security Administration researchers have projected that my proposal would return almost $1.7 billion in new tax revenues generated by the increased work of older persons.

Yet when I read the Associated Press story discussing my bill the day after the hearing, I could not recognize it as the one I had introduced. There was the usual, inflated cost estimate. The news article charged that repeal of the test would cost $7 billion.

Mr. William Driver, Commissioner of Social Security, reportedly gave the press the larger figure when he was asked how much total repeal of all earnings ceilings in the Social Security Act would cost. What the news story fails to mention, however, is that this question is irrelevant to my bill.

My bill repeals the earnings test for older persons. The proposal the Commissioner was asked about repeals the earnings test for young people, millions of children of deceased workers, college age survivors, surviving spouses, and other persons below the age of 65. The legislation I have introduced does not cover this group of younger persons.

The cost estimate in the Associated Press report is unrealistic. It is disclaimed by the Social Security Administration itself as not bearing on my bill.

It is a lie for anyone to infer that my bill would cost the amount reported in the AP article, and I ask that such use of fraudulent data be stopped.

Mr. President, so that my colleagues may have the facts before them, I ask that the actual cost estimate furnished by the Social Security Administration, and an excerpt from a recent article in the Social Security Bulletin, which estimates increased tax revenues generated by elimination of the earnings test, be printed in the Record.

The material follows:

MEMORANDUM

To Mr. Dwight K. Bartlett, III.
From Harry C. Ballantyne.
Subject Proposal to eliminate the retirement test for workers aged 65 and over—Information.

Under the subject proposal, the retirement test would be eliminated for workers aged 65 and over, beginning January 1983. The resulting additional amount of OASDI benefit payments for months in calendar year 1983, over and above benefit payments under present law, is estimated to be $2.1 billion. After 1983, the additional amount of benefit payments would increase gradually, but at a slower rate than total OASDI benefit payments.

This estimate reflects the effect of the reduction in the age at which the retirement test ceases to apply under present law, from age 72 to age 70, beginning in 1982. The increases in the annual amount of earnings exempted from the test, which are scheduled under present law for workers aged 65 and over, are also reflected in the estimate. The exempt amount for workers aged 65 and over is scheduled to increase to $6,000 in 1982. Under the intermediate assumptions in the 1979 Trustees Report, upon which the estimate in this memorandum is based, the exempt amount for workers aged 65 and over is assumed to increase to $6,600 in 1983.

HARRY C. BALLANTYNE,
Acting Deputy Chief Actuary.

[From the Social Security Bulletin, September 1979, volume 42]

TAX IMPACT FROM ELIMINATION OF THE RETIREMENT TEST

This article estimates the initial-year net changes in social security (OASDHI) tax receipts and Federal individual income-tax receipts if the social security retirement (or earnings) test were eliminated for individuals aged 65–69. Individuals under age 65 are not considered. The expenditure and tax estimates shown are for 1978 but with the 1982 earnings ceiling adjusted to 1978. Persons aged 70 and 71 will not be subject to an earnings test in 1982 and are therefore excluded from the study. Thus, in 1978 levels, the budget impact of changing the 1982 retirement test for persons aged 65 and over is estimated.

Under the present provisions of the Social Security Act, elderly workers insured to receive OASI benefits at age 65 who earn income above an allowable amount will forfeit their current benefits at a rate of $1 for each $2 of excess earned income. Workers aged 62–64 who retire early and forfeit OASI benefits are compensated by actuarially adjusted future benefit increases equivalent to current benefits forgone, but the adjustments to workers aged 65 and over represent only a fraction of benefits forgone because of the retirement test.

The tax impact estimates shown here are based on a 1978 sample population but incorporate known 1982 tax provisions. Current individual income-tax statutes are assumed to remain in effect in 1982, and the $6,000 allowable earnings ceiling in 1982, adjusted to 1978, is used. The 1982 social security tax rates are used. The simulated net changes in the budget are therefore designed to reflect two 1982 provisions of social security law: (a) A liberalization of the retirement test under the 1977 amendments between now and 1982 that reduces benefit costs in eliminating the test and (b) higher OASDHI tax rates that increase the tax revenue per dollar of additional taxable earnings generated by removing the earnings test.

The social security actuaries estimate that the additional benefit payout cost to the OASI trust fund, if the retirement test were eliminated for workers aged 65–69, is approximately $2.1 billion for the 1982 earnings ceiling adjusted to 1978. It is estimated here that the net changes in work effort by elderly workers still actively employed (part time and full time), if the test were eliminated, will generate $139 million in OASDHI tax receipts and $191 million in individual income-tax receipts or about 16 percent of the $2.1 billion increase in outlays. If 10 percent of workers aged 65–69—either fully retired or contemplating retirement—were to be fully employed in the labor force in 1978,

these workers would generate an additional estimated $540 million in social security taxes and $786 million in individual income taxes. With these elderly current workers and continuing or returning fully retired workers considered together, the estimated net increase in social security tax receipts represents about 32 percent of additional benefit payouts, and individual income taxes generate about 47 percent of additional benefits. The projected increases represent about 79 percent of estimated increased OASI benefits.●

COMPETITION, THE NEW MODEL OF HEALTH CARE FINANCING PLANS

● Mr. DURENBERGER. Mr. President, the Washington Report on Medicine and Health in its March 17 edition included a special report titled "Competition, the New Model of Health Care Financing Plans." This weekly health newsletter is generally considered the premier health newsletter, and I recommend the special report.

Some aspects of the reasoning behind the "pro-competitive" approach are discussed. The support of the provider community is mentioned, as is the support of the administration for many of the features of competition.

I would add that my own pro-competitive bill, the Health Incentives Reform Act, S. 1968, was the subject of hearings before the Health Subcommittee of the Senate Finance Committee on March 18 and 19. At these hearings, the issues were fully aired. My cosponsors, Senators BOREN and HEINZ, and I were happy to hear of the support of such organizations as the American Hospital Association, the Federation of American Hospitals, and the Washington Business Group on Health. Senator BELLMON of the Budget Committee offered literate and informed support, entered by me into the CONGRESSIONAL RECORD. Prof. Alain Enthoven, Dr. William B. Schwartz, Mr. Karl Bays, Dr. Gary Appel, Dr. Richard Frey, and Mr. Paul Parker were all similarly enthusiastic. For the administration, Alfred Kahn, Emil Sunley, and Karen Davis gave most positive and constructive testimony.

This special report appearing in the Washington Report on Medicine and Health summarizes the major procompetitive bills before Congress. It is apparent that our approach has much in common with those taken by Chairman ULLMAN in the House (H.R. 5740), and Senator SCHWEIKER (S. 1590).

The editor of Washington Report on Medicine and Health, Mr. Jerome F. Brazda, has once again lived up to his own high standards of health reporting. I commend his special report to all readers of the CONGRESSIONAL RECORD and would be happy to provide them with reprints if they will contact my office.

The report follows:

COMPETITION, THE NEW MODEL OF HEALTH CARE FINANCING PLANS

The burden of health care costs, as old as the practice of medicine itself, has for decades produced a series of plans to help Americans pay the many bills that can result. Medicare and Medicaid in 1965 were a turning point in this history. The federal government guaranteed two large classes, the aged and the poor, the right to care. Then, early in the 1970s, the Nixon Administration seized on health maintenance organizations—a fancy new name for prepaid group practices—as an answer to the problem of rising costs that had put a powerful new squeeze on the national budget through Medicare and Medicaid. The concept, in its simplest terms, caught on because of its attractiveness, and hardly a politician discussed the cost of medical care without calling for development of more HMOs as a means of doing something about it.

Talk of "competition" began to surface at about that time, at first appearing essentially to mean HMOs, which were cited as applying the spirit of good old American economic competition to health care economics. But now, advocates of "competition model" plans, as they are called, are tending to shy away from promoting HMOs as anything more than one of the financing options in the competition.

With mention of "competition" turning up so frequently, Medicine & Health takes a look at the competition movement and the various legislative proposals it has spawned in this special report.

The rise of competition as the new palliative for health care inflation appears directly related to proposals for national health insurance and regulatory plans as remedies for inflation resulting from more sophisticated health care techniques and the increased conviction that medical care is a right to be guaranteed by the federal government. Competition tends to be most enthusiastically favored by health care providers who want no part of new regulations and by political conservatives who oppose adding any federal health financing programs to the national budget.

Several pro-competition bills have been introduced in Congress, and hearings have been held for purposes of discussing the issues. Appearing before the House Ways & Means Committee, Carter Administration witnesses said the President's own National Health Plan for an insurance system "includes competitive elements as part of a comprehensive strategy for reforming the health system." But the Administration position has been, essentially, "don't get your hopes up." Nathan Stark, HEW Under Secretary, speaking to a seminar on competition at the Federation of American Hospitals meeting earlier this year, questioned whether competition can be "a goal in itself."

Competition proposals now before Congress for the most part seek to stimulate competition between various prepaid health care payment plans, HMOs included, as they are offered to insured, employed persons. Various uses of the tax laws are proposed by most of the plans, including both business and personal exemptions and credits.

The modern popularity of "competition" appears to have its genesis in a proposal for a "Consumer Choice Health Plan" advanced during the past several years by Alain Enthoven, a Stanford University professor and consultant whose clients have included the Department of HEW and the Kaiser Foundation, grandfather of HMOs.

Enthoven has worked on development of the plan with Dr. Paul Ellwood, who sold the HMO concept to the Nixon Administration, and other associates of Ellwood's Minneapolis, Minn., consulting firm, InterStudy. Enthoven's plan, not yet introduced in toto as a legislative bill, would provide the employed with a subsidy in the form of a tax credit for them to purchase what they see as the best deal in health insurance, hence the "competition" between plans to enlist customers. Low income Medicaid beneficiaries and Medicare recipients would get direct subsidies in the form of vouchers to do their health insurance shopping. This is a feature that tends to get lost as versions of competition model bills, designed largely for the employed, find their way to the House and Senate hoppers.

As the popularity of the competition idea grows, hard legislative proposals are appearing in a dynamic process that is producing varying versions. Sen. David Durenberger (R–Minn.) introduced a bill (S. 1485) last July that emphasized HMOs as alternatives that would have to be offered to employees in order for the employers to qualify for tax advantages. But in November, Durenberger introduced another bill (S. 1968) which substantially revises the earlier measure by removing the HMO mandate, among other things, and which has become more or less the definitive competition bill along with one (S. 1590) by Sen. Richard Schweiker (R–Pa.). The two Republicans have been talking about a possible merger with a joint bill but seem to be in no hurry.

Following are summaries of some of the leading competition bills now before Congress:

—The Health Incentive Reform Act (S. 1968) by Sen. Durenberger: This bill would use tax incentives to encourage employers of more than 100 persons to offer at least three plans to their employees. Those selecting a less costly plan would get a rebate from the employer of the difference between the premium of the plan he chooses and the contribution amount selected by the employer—this is seen as an incentive to the employee to shop around for the best deal. A staff member familiar with the legislation estimated the difference could be as much as $20, or perhaps even $40 a month. The bill introduced by Durenberger last November carefully eliminated a reference to HMOs that had been an important part of a bill (S. 1485) with a similar title that he put in last July. Earlier, Durenberger would have required employers to offer at least three health benefit plans, two of these HMOs where possible, The original bill would have allowed employers to deduct as a business expense only that portion of the health insurance premium they pay for employees that does not exceed the average premium cost of an HMO. The employer is not required to offer a health plan but must meet the bill's standards if he does so. All employers offering a health plan would be required, to qualify for tax advantages, to include in their plans a catastrophic medical expense benefit for costs higher than $3,500.

The Comprehensive Health Care Reform Act (S. 1590) by Sen. Schweiker: This bill would use the tax laws and employer-employee health insurance in order to bring about health care system reforms. Schweiker sees it as an alternative approach to the issues of hospital cost containment, catastrophic health insurance, and preventive health care. Employers would have to meet the plan's requirements in order to qualify for business expense income tax deductions. Each employer would be required to offer a "low option" plan with a 25 percent copayment on all services. A high option plan could be offered if a low option was too. Employers would be required to contribute equally to each insurance plan and employees who chose the low option plan would get a rebate of the difference between the high option premium and the low option premium. This is regarded as an incentive to choose less expensive coverage.

The Health Cost Restraint Act (H.R. 5740) by Rep. Al Ullman (D-Oreg.): This bill was the subject of hearings recently held by the Ways & Means Committee, which Ullman chairs. It would establish standards that employee health insurance plans would have to meet, specifically including HMOs as an alternative that must be offered. The proposal would establish a maximum employer contribution to an employee's health insurance plan that could be used as a tax deduc-

tion, viewed as a means of fostering awareness of the cost of health care. The proposal does not suggest expansion of coverage either for the low income population or for the better paid working class. The bill does not mandate insurance coverage but rather imposes eligibility standards as a means of qualifying for favorable tax treatment. In order to meet the tax requirements, employers would have to contribute within 10 percent of the amount the employee pays for health insurance. In testifying at Ullman's hearing, Karen Davis, deputy assistant secretary of HEW for planning and evaluation and one of the Administration's top health economists, cautioned against establishing minimum standards without mandating coverage by employers. It could, she said, result in some employers completely discontinuing their coverage or becoming reluctant to initiate it, something that happened to private pension plans after enactment of federal legislation. Alice Rivlin, director of the Congressional Budget Office, said the Ullman bill is a "cost containment proposal rather than a national health insurance proposal." She estimated it could lower medical spending by $5 to $8 billion and would increase tax revenues.

Much of the energy behind the competition movement comes from Enthoven, Ellwood, and the InterStudy group. Enthoven and some associates have their sights aimed squarely at Sen. Edward Kennedy (D-Mass.) and his organized labor backers who have been, with limited success, promoting a national health insurance plan for years. The Enthoven group also is zeroing in on the Carter Administration for its advocacy of a National Health Plan rival to but also similar to the Kennedy-labor plan and of an ill-fated hospital cost containment bill the President continues to push as a budget-cutting device.

Enthoven recently has been appearing on the lecture circuit with Professor Cotton Lindsay of Emory University and a group of other essentially conservative health thinkers who have collaborated on a book that knocks Kennedy's and Carter's plans and promotes competition. The book, "New Directions in Public Health Care: A Prescription for the 1980s," is published by the Institute for Contemporary Studies of San Francisco, a nonprofit organization with a strong conservative bias.

One of the book's contributors, Jack Meyer of the conservative think tank American Enterprise Institute, writes that the Kennedy and Carter NHI bills fail to provide incentives for competition.

Writing in the "New England Journal of Medicine" (Oct. 11, 1979), Dr. Walter McClure of InterStudy said the alternative to increased regulation of the medical care system is "the introduction of effective market incentives in the delivery of medical care through the establishment of competing 'health-care plans' in communities."

As an example of a "competitive system in practice," McClure cited the Minneapolis-St. Paul area where seven HMOs are operating. He acknowledged, however, that they serve only 12.4 percent of the population and that, except for one, they are not federally qualified, precluding Medicare beneficiaries from joining.

In a statement prepared for Senate Finance Committee hearings on competition bills, Durenberger said his proposal "reforms the system" by working through employers to make them cost conscious. "Once the concepts of competition and consumer choice become part of our health care system," he said, "then we can expand and improve coverage." This statement underscores what critics of the plan, largely those who support Kennedy and Carter-type national health insurance proposals, have been saying about competition—it has no immediate vision of expanded coverage for the poor and the aged.

Under Secretary Stark, in his Federation of American Hospitals speech, asked "competition to what end?" One of the factors that has limited competition in the health care industry up to now, he said, is "the extent to which health providers themselves control the market." It is now estimated, he said, that "about 70 percent of all health care expenditures are generated by physician decisions."

Viewed as a cost control measure, competition has interested such people as CBO director Rivlin, who told the Ways & Means Committee that limiting tax-free employer contributions, or mandating that employers offer a choice of plans, are ways to reduce the use of insurance and contain costs. A qualified Capitol Hill staffer told M&H he felt competition plans could have a long-range effect on medical costs, but noted that the concept lacks high-powered backing in Congress. In sum, competition seems to be essentially what it isn't—it is not national health insurance nor cost containment regulations.●

CONGRESSIONAL ACTION ON FOOD STAMP FUNDING FOR FISCAL YEAR 1980

● Mr. DOLE. Mr. President, I take the floor at this time to emphasize the points made in my earlier statement this week, and to express my concern that we take action by May 15 on the supplemental appropriations for the food stamp program in fiscal year 1980. I and many of my colleagues on this side of the aisle, as well as Senators McGOVERN and TALMADGE, have expressed their concern over the current funding problem. We are now waiting for the Senate to take up the third concurrent budget resolution which is tied to the first, and for the House to act on S. 1309, which the Senate passed on July 23, 1979, and the House reported from Committee on February 27 of this year.

Unless this additional funding is provided, there is an imminent danger that food stamp benefits will have to be discontinued as of June 1, 1980. This is not a situation that the States are looking forward to dealing with, and we should do everything in our power to assure that they are not forced into a position of having to cope with the problems such a suspension of benefits would cause.

LEGISLATING IN CRISIS

It is because of the condition of our economy in general that original estimates for food stamp expenditures were inaccurate in projecting necessary funding levels for fiscal year 1980. The President has consistently delayed taking those strong measures needed to strengthen the economy and chose not to let the Congress know the extent of its specific budget revision proposals until late March. The administration really must bear the burden of their own miscalculations and delays rather than using the Congress as the scapegoat.

Because the Congress was awaiting specific direction from the administration on how to balance the Federal budget, and because the President failed to submit his revised budget until 2 months after his initial budget request, the administration has placed Congress in the awkward position of legislating in crisis. It would be nice to have had some time to consider food stamp reforms along the way, but now we are forced to concern ourselves primarily with merely pushing through the needed legislation in time to prevent a crisis from occurring.

BROADER ECONOMIC ISSUES INVOLVED

It is because of the condition of the economy in general that original estimates for food stamp expenditures have proven inaccurate in projecting funding levels for fiscal year 1980. As economic indicators change on almost a daily basis because of a failure by the Carter administration to act responsibly to control inflation, it is virtually impossible to project what our country's needs will be in the coming months. However, it is our responsibility and our duty to act in a timely manner to insure that no additional hardships are brought to bear on our citizens. While unemployment and food prices may have stabilized somewhat, nonfood items have escalated in cost and eroded the purchasing power of everyone. Because they must spend more on nonfood, cost-of-living expenses, lower middle-income groups are being pushed over the edge into food stamp eligibility.

This fact alone is due cause for concern, but what happens when even the purchasing power of our middle-income citizens becomes so limited that there is barely enough for food items? If our economy continues along the crash course that is outlined for us, such a Federal program as food stamps will reel out of control along with it. While we are drawing more and more people into the program, the benefits result in a direct income transfer and not a supplemental feeding program, as it was originally designed to be. Lower income groups, now finding it hard to make ends meet, are being forced to exist in a constant financial crunch and unless our economy is brought under control, we can only anticipate that increased funding levels for this program, as well as other social programs, will become necessary.

RECENT CBO PROJECTION ON FOOD STAMP PROGRAM

In its April 22, 1980, memorandum to the Senate Budget Committee, the Congressional Budget Office makes the following statement:

Inflation. Grocery store food prices declined 0.2 percent in January, declined 0.4 percent in February, and were up 1.0 percent in March. Food prices increased at an annual rate of only 2.0 percent for the 3 months ending in March. While food prices have clearly stabilized during this period, other basic necessities have experienced unprecedented increases—housing increasing at a 19.5 percent rate, fuel oil at a 62.6 percent, gasoline at 95.4 percent, transportation costs at a 33.6 percent, public transportation at a 26.3 percent, and medical care at a 16.9 percent.

I hypothesize that these rapid price increases have resulted in low and lower-middle income families choosing to reallocate their limited incomes so as to select those commodities which are subsidized and there-

by continue to maintain their real purchasing power in the non-subsidized goods. Since the elimination of the purchase requirement, the food stamp program has become more of a direct income transfer program, directly substitutable for nonfood purchases. Hence the propensity to participate in the program increases with relatively high rates of inflation in nonfood, but still basic items.

This statement in itself summarizes well CBO's analysis of the impact of the entire economic forecast on the food stamp program.

CALL TO ACTION

We in the Congress cannot let our needy citizens down by dragging our heels on this important legislation. We cannot allow a suspension of food stamp benefits to occur in these difficult economic times. As all are aware, the legislative machinery of the Congress is controlled by the majority party and it is the hope of the Senator from Kansas that the majority leadership in both the House and Senate will see the urgency of this legislation and hurry it to the floor as soon as possible. We are dealing with an issue that most certainly will receive bi-partisan support because of its implications for all of our States, and I again urge my colleagues to promote action in both the House and Senate that would expedite the passage of S. 1309 and the third concurrent budget resolution to prevent an imminent crisis in food stamp funding.●

ARMENIAN MARTYRS DAY

● Mr. LEVIN. Mr. President, today we honor the memory of the 1,500,000 Armenians massacred between 1915 and 1918 by the Turkish Ottoman Empire. This day, the 65th anniversary of Armenian Martyrs Day, is not only a day to commemorate the memory of these victims of man's inhumanity to man. This day also serves as an unfortunate reminder that this first genocide of the 20th century became the precedent of the holocaust of World War II. These genocides are historical realities which can never, and should never be blotted from the conscience of mankind.

It is for this reason that we honor the memory of those who perished. But we should also remember the accomplishments of a scattered people once they found a new home in the United States where their communities flourished.

Today, the children and grandchildren of these early immigrants have contributed to every part of American society. Their works and contributions to business, the arts, the professions, academia, government and philanthropic endeavors is a record of which all America and all Armenian-Americans can be proud.

Mr. President, this is a day that Armenians world-wide remember their ancestors who died so that those living today could be proud of a rich culture and heritage that has contributed so much to the world community. This is also a day that each of us should pause and remember the martyrs of this century's first genocide.●

REMEMBERING ARMENIAN MARTYRS DAY AND THE HOLOCAUST

● Mr. DOLE. Mr. President, on April 24, 1915, the killing of 200 Armenian leaders marked the prelude to the slaughter of about 1,500,000 Armenians. It is estimated that hundreds more dropped to a certain death in the desert areas of the eastern Turkish provinces. The brutal slaying of this courageous people can never be forgotten.

The unprecedented act of violence and cruelty that took place undoubtedly prepared the psychological terrain that made possible the mass murder of people whose crime was to belong to ethnic, national or religious affiliations deemed undesirable or "inferior." It is therefore fitting that we link in a common remembrance the victims of the Armenian tragedy and those of the holocaust of World War II. Both stand as infamous monuments to human barbarism. It was as if, in the words of the philosopher Martin Buber, "God had hidden his face" from the world and permitted the unthinkable to take place.

The horrors that were perpetrated during the Armenian episode as well as during the Nazi regime must serve as a reminder to the free world of its responsibility to insure that such a scourge is never repeated.

Millions of men, women and children were murdered. The uniqueness of each human life makes our loss irreversible. We will never know how many writers, thinkers, scientists, and musicians might have enriched the universe with their ideas, their discoveries, and their talents.

Has the world learned from the tragic experiences of the past? The recent holocaust in Cambodia, the killing of Christians in Lebanon, that of Arab and Jews in the Middle East, are but a partial answer to this question. Yet, a lesson has been reaped. The world has demonstrated a greater willingness to assume responsibility over collective tragedies. Efforts are being undertaken by nations to try and devise peaceful solutions to conflicts, and ways to bring better understanding in the community of men.

But the road is arduous, and the history of mankind has proven that we are engaged in a constant struggle between the forces of darkness and those of enlightenment. It is therefore essential that we use occasions such as this to pledge our continuing efforts to try and achieve the establishment of a world where tolerance and understanding replace bigotry and hatred, a world where freedom replaces slavery.●

OCEAN SHIPPING ACT OF 1980

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 702, S. 2585.

Mr. BAKER. Mr. President, reserving the right to object, and I shall not object, the purpose of the reservation is to advise the majority leader that this item, together with a technical amendment that is to be offered to the measure, is cleared on our calendar, and we have no objection to its consideration and passage.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 2585) to revise and codify the Shipping Act, 1916, and related laws.

There being no objection, the Senate proceeded to consider the bill.

UP AMENDMENT NO. 1050

(Purpose: To correct a technical error in S. 2585

Mr. ROBERT C. BYRD. Mr. President, on behalf of Mr. CANNON I send to the desk an amendment and ask that it be stated by the clerk. This amendment has been approved by the Committee on Commerce, Science, and Transportation.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk proceeded to read the amendment.

Mr. ROBERT C. BYRD. Mr President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 64, strike lines 5 through 10, and substitute:

(a) Section 1 of the Shipping Act, 1916 (39 Stat. 728; 46 U.S.C. 801) is amended to read as follows:

On page 66, between lines 13 and 14, insert the following new subsection:

(c) The title of the Shipping Act, 1916 (39 Stat. 728) is amended to read as follows:

"An Act to regulate the domestic offshore commerce of the United States".

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Nevada.

The amendment was agreed to.

● Mr. INOUYE. Mr. President, S. 2585, the Ocean Shipping Act of 1980, is intended to create effective, unified, current, and consistent policies and laws to regulate our international liner trades. It proposes badly needed and long-overdue revision and updating of a law which was enacted 65 years ago.

Mr. President, the United States is committed to the establishment and maintenance of a strong merchant fleet built and owned by American citizens, operated by American crews, and fully capable of meeting our international economic, military, and political needs and commitments under all foreseeable circumstances. This commitment reflects our awareness that even in times of peace, economic and political tensions may seriously disrupt traditional patterns of commercial interaction on international trade routes. It serves notice that, as the greatest international power of the free world, the United States cannot be dependent upon foreign vessels owing allegiance to foreign flags, foreign policies, and foreign interests for its survival.

The U.S. commercial liner fleet serves as a logical focal point of national shipping policy because our international

commerce is substantially dependent on regularized service at stable rates and because we have placed heavy reliance on our general cargo fleet for national defense purposes. Despite the national importance of the U.S. liner fleet, its history has been marked by a decline so pronounced that the June 16, 1978, edition of the British publication Marine Week stated:

The U.S., as the world's largest trading nation, not only lacks a merchant fleet commensurate with [its] true requirements but will shortly lack the means to achieve it.

In 1970, 19 U.S.-flag liner companies were active in the U.S. ocean commerce; only 10 are competing today. Within the last year, two companies—Pacific Far East Lines and States Steamship Co.—have gone into bankruptcy. Today, U.S.-flag carriers are outnumbered by foreign competitors on every trade route in the U.S. foreign commerce.

In his letter of July 20, 1979, to the Senate Commerce Committee, President Carter warned that "our merchant marine faces an increasingly uncertain future." Our ships, he noted, now carry only 5 percent of our foreign trade. President Carter characterized "as intolerable" the present situation where "the U.S.-flag share of our liner trade is less than 30 percent, when developing countries have set goals of 40 percent for themselves."

Most significantly, the President recognized that the laws by which we regulate our liner trades were largely responsible for this "intolerable" situation. Regulation of liner conferences has become increasingly complex, uncertain and time-consuming, he observed. His letter further noted that delays in the Federal Maritime Commission's approval process sometimes stretch on for years. Conflicting views expressed by various executive branch agencies concerning acceptable conference practices, as well as shifting decisions by the FMC and the courts have created confusion over the responsibilities of the conferences and the Government's regulation of conference activities. In order to end the uncertainty and delay that surround government regulation of ocean shipping, he said it was necessary to revise substantially our laws governing liner conferences.

The committee had anticipated the President's analysis of the state of our liner fleet and his recommendation for remedial legislation 2 years earlier.

In March 1977, my Merchant Marine Subcommittee began addressing itself to the specific problems facing the liner segment of our maritime industry.

A number of hearings were held during that year and the following one, and two major pieces of legislation were enacted as a result.

Public Law 95–843, strengthened certain provisions of the Shipping Act, 1916, in order to regulate the rate-cutting practices of state-controlled carriers operating as "cross-traders" in our international liner trades. Predatory rate practices by certain state-controlled carriers threatened the stability of our trades and the viability of the U.S. liner fleet.

The second piece of legislation, Public Law 96–25, strengthened the provisions of the 1916 act which prohibit illegal rebating. Illegal rebating had been widespread in our liner trades for many years, and had been characterized by many experts as the most serious threat to the stability of those trades.

Mr. President, while Public Law 95–483 and Public Law 96–25 dealt with two of the most immediate threats to our liner trades, my subcommittee recognized that these two laws were directed at symptoms rather than the fundamental problems underlying the U.S. ocean commerce and that substantially more was needed to be done to remedy the uncertainty, delay, and chaos which characterized Federal regulation of ocean liner shipping. At the request of the administration, however, the subcommittee delayed considering additional measures pending the report of the administration's Interagency Maritime Task Force, which we did not receive until July 20, 1979.

In September of last year the committee began extensive hearings on a series of proposals intended to serve as a catalyst for legislation that might be necessary to produce a well-conceived, effective, modern, unified, and consistent regulatory policy which is responsive to the realities of international ocean shipping.

During its deliberations, the committee received testimony from over 70 witnesses on the issues involved in the review and revision of maritime laws regulating international ocean shipping, principally the Shipping Act, 1916.

S. 2585, which is unanimously supported by the Commerce Committee, is the result of these extensive deliberations as well as those which began 3 years ago.

Mr. President, the Commerce Committee believes that the legislation it is reporting will enable the U.S. liner fleet to compete in the real world of internation ocean shipping and harmonize our laws with those of our trading partners to the fullest practicable extent within the framework of our own national policies.

Among the major regulatory problems responsible for the chaos in our liner trades which S. 2585 is intended to remedy are:

Delay in the FMC's approval process for section 15 agreements;

Dilution of clear standards of approvability for section 15 agreements and subsequent loss of predictability in regulatory decisionmaking:

Confusion over rates and responsibilities of conferences and conflicting views expressed by various executive branch agencies concerning acceptable conference practices;

Dumping of excess cross-trader vessel tonnage in our foreign trades; and

The "chilling effect" on the efforts of carriers to cooperatively arrive at rational commercial arrangements to improve U.S.-flag participation in our liner trades, increase operational efficiency, and promote comity with our trading partners. These efforts not only face constant risk of opposition from the Antitrust Division of the Department of Justice, but have exposed all parties to prosecution or the threat of prosecution under the U.S. antitrust laws.

Mr. President, I urge enactment of S. 2585.●

● Mr. WARNER. Mr. President, I rise in support of S. 2585, the Ocean Shipping Act of 1980. This legislation represents the first major step toward the restoration of America's commercial ocean-going fleet to its rightful position of world maritime leadership.

It is, indeed, imperative for the United States to have a strong, well-balanced merchant fleet. A sound U.S. liner industry maintains stability in America's international trade routes by providing shippers with regularized ocean transportation service. Moreover, our maritime fleet plays a major part in national defense posture by providing support for the Nation's military operations.

During the last decade, however, it has become painfully obvious that the maritime policy of the United States—to the extent we have a maritime policy—has been a failure. At the end of 1960, for example, the U.S. privately owned fleet was the 4th largest in the world, and today we have fallen into 10th place. American-flag ships now carry a mere 5 percent of the total U.S. ocean commerce. This compares with Russia's 50 percent of their own trade, Japan's 40 percent, Greece's 45 percent, and Norway's 37 percent. Today the U.S.-flag fleet consists of 725 vessels compared to the U.S.S.R.'s 2,456, Greece's 2,379, the United Kingdom's 1,377, and Japan's 1,846. With respect to liner operation, in 1970 there were 19 U.S.-flag companies whereas today there are 10. This represents a loss of about one company per year.

In the face of these sobering statistics, the Senate Merchant Marine and Tourism Subcommittee attempted to identify more precisely the causes which precipitated the current deplorable condition of the U.S. fleet. Several problems emerged.

First, it is clear that the regulation of liner conferences has become increasingly complex, uncertain and time consuming. Delays in the Federal Maritime Commission (FMC) approval process sometimes stretch on for years. Second, conflicting stands on issues of maritime importance are held by various Federal agencies, and the U.S. Government seems unable to speak with a single voice on maritime policy questions. Overtonnaging, rate cutting, rebating and the proliferation of Government-owned carriers in our liner trades have created an instability which jeopardizes the huge capital investment of U.S. shipping companies. Moreover, U.S. regulatory policies are inconsistent with traditional trading practices of the international maritime community which has resulted in a constant feeling of resentment on the part of our foreign trading partners toward the United States' unilateral actions.

S. 2585 is a fundamental revision of U.S. maritime regulatory policies embodied in the Shipping Act of 1916 and attempts to resolve these most difficult issues. I recognize that in order to complete our revitalization effort, we must

also have an in-depth review of our maritime promotion programs. It is my expectation that the Senate Commerce Committee's Merchant Marine and Tourism Subcommittee will begin this analysis in the near future, and I look forward to participating in that effort.

S. 2585 would first establish a new statement of maritime policy objectives that will set the tone for the Federal Maritime Commission's regulatory activity. Second, the implementation of conference agreements is facilitated by providing a new standard of approval whereby conference agreements may be implemented if they are found consistent with the act's declaration of policy. This new approval standard will be in lieu of the current antitrust standard which has evolved from a series of administrative and judicial interpretations. Moreover, the FMC must reach a final decision on conference agreement approval within 1 year to insure that conferences do not encounter unnecessary regulatory delays.

In its unanimous approval of S. 2585, the Commerce Committee has recognized the conference system as an acceptable method of commercial operation in international ocean shipping. However, the Ocean Shipping Act retains the present open conference system whereby all of the world's carriers may join conferences serving the U.S. foreign trades.

Complete antitrust immunity is granted to conference activities. This is not only consistent with international shipping practice but also would remove a source of constant irritation between the United States and our foreign trading partners. Furthermore, conferences are granted antitrust immunity to enter into intermodal transportation arrangements with air carriers, motor carriers and rail carriers for the transportation of cargo under through routes or joint rates. U.S. carriers are most competitive in high technology services that facilitate intermodal transportation, and this provision will help to provide a regulatory environment which will encourage the development of intermodal services.

S. 2585 also provides antitrust immunity for the formation of shippers' councils. This new concept in the U.S. ocean trades will allow U.S. exporters and importers to join together and negotiate collectively with carrier conferences. It is fully expected that this authority will result in improved service to shippers as a result of their ability to use collective bargaining power to counterbalance the collective power of ocean carrier conferences.

Mr. President, America simply must turn its maritime industry around and begin the redevelopment of a strong ocean shipping industry. Clearly, other nations of the world recognize the importance of a merchant fleet for economic stability, for independence from trade interruptions by antagonistic governments, and for direct military support in time of war or national emergency.

This difficult and complex task has already been neglected for too long. The Ocean Shipping Act of 1980 would begin the corrective process toward this vital national objective.

This legislation makes a very positive contribution to the regulatory environment of both United States and foreign-flag ships serving U.S. ocean trade routes. S. 2585 was unanimously reported from the Committee on Commerce, Science and Transportation and, likewise, is deserving of full Senate support.●

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

So the bill (S. 2585), as amended, was passed as follows:

S. 2585

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Ocean Shipping Act of 1980".

TABLE OF CONTENTS

TITLE I—GENERAL PROVISIONS

SEC. 101. DECLARATION OF POLICY.

(a) The objectives of United States ocean transportation regulation are:

(1) development and maintenance of an efficient, innovative, and economically sound ocean transportation system to meet the current and future needs of United States foreign commerce;

(2) carriage by vessels of United States registry of a substantial portion of the waterborne export and import foreign commerce of the United States in order to further both the economic and national defense goals of the Nation;

(3) protection of the rights of shippers, ports, and consumers by the prevention of discriminatory, prejudicial, unfair or deceptive practices proscribed by this Act;

(4) encouragement of the lowest possible stable freight rates which are commercially feasible and the highest quality service to shippers and consignees consistent with other objectives of this Act;

(5) encouragement of exports from the United States to achieve and maintain a favorable international balance of payments;

(6) comity with nations engaged in trade with the United States;

(7) development and maintenance of a regulatory environment responsive to the needs of the public in which decisions are reached promptly and fairly;

(8) assuring the maintenance of a dependable common carrier service responsive to the needs of exporters and importers in the waterborne foreign commerce of the United States; and

(9) encouragement and support of a regulatory environment which furthers the national objective of the efficient use of fuel for energy conservation through cooperation among carriers, rationalization and similar arrangements.

SEC. 102. DEFINITIONS.

As used in this Act—

(1) "agreement" means understandings, arrangements and associations, written or oral, and any modification or cancellation thereof;

(2) "Commission" means the Federal Maritime Commission established by section 101 of Reorganization Plan Numbered 7 of 1961 (75 Sta. 840);

(3) "common carrier by water" means a person, whether or not actually operating a vessel, who holds himself out to engage in water transportation for hire as a public employment and undertakes to carry for shippers indifferently, but does not include one who holds himself out to engage in transportation by ferryboat or ocean tramp;

(4) "common carrier by water in foreign commerce" means a common carrier by water between the United States or any of its territories or possessions and a foreign country, whether engaged in the import or export trade, and whether or not its service operates through or originates or terminates at ports of the United States or its territories, or possessions;

(5) "conference" means an association of two or more vessel operating common carriers by water which provides ocean transportation for the carriage of cargo on a particular route or routes within specified geographic limits and which operate within the framework of an agreement establishing freight rates and any other conditions or service;

(6) "consignee" means a person to whom cargo is shipped or to whom cargo is to be delivered pursuant to the terms of the bill of lading;

(7) "contract shipper" means a shipper or consignee who is a party to a patronage contract as defined in this section;

(8) "controlled carrier" means a common carrier by water in foreign commerce which is or whose operating assets are directly or indirectly owned or controlled by a government. Ownership or control by a government shall be deemed to exist if a majority of the interest in the carrier is owned or controlled in any manner by such government, by any agency of the government or by any person, corporation, or entity controlled by such government. Ownership or control shall also be deemed to exist if a government has the right to appoint or disapprove the appointment of a majority of the directors or the chief operating or executive officer of the carrier;

(9) "deferred rebate" means a return of any freight payments by any common carrier by water in foreign commerce to any shipper as a consideration for the giving of all or any portion of his shipments to the same or any other carrier, or for any other purposes, the payment of which is deferred beyond the completion of the service for which it is paid, and is made only if, during both the period for which computed and the period of deferment, the shipper has complied with the terms of the rebate agreement or arrangement;

(10) "freight forwarding" means the dispatching of shipments by any person on behalf of others, via common carrier(s) by water in commerce from the United States or its territories or possessions to foreign countries, and processing the documentation or performing related activities incident to such shipments;

(11) "independent ocean freight forwarder" means a person carrying on the business of freight forwarding for a consideration who is not a shipper or consignee or a seller or purchaser of property to foreign countries;

(12) "intergovernmental maritime agreement" means an agreement between the United States and a foreign government which relates to the carriage of ocean commerce between or among the signatories;

(13) "intermodalism" or "intermodal transportation" means the utilization of two or more different modes of transportation from origin to destination, at least one of which is ocean transportation subject to this Act;

(14) "non-vessel-operating common carrier" means a common carrier by water that does not operate the vessels by which its ocean transportation service is provided. A non-vessel-operating common carrier is a shipper in his relationship with vessel-operating common carriers by water;

(15) "other person subject to this Act" includes conferences, shippers' councils or any person carrying on the business of freight forwarding or furnishing wharf, dock, warehouse, or other terminal facilities in connection with a common carrier by water;

(16) "patronage contract" means an agreement with a common carrier by water in foreign commerce or conference of such carriers by which a contract shipper obtains a lower rate by committing all or a fixed portion of its cargo to such carrier or conference;

(17) "person" includes individuals, corporations, companies, associations, firms, partnerships, societies, joint stock companies, and the Government or any governmental agency of the United States, State, territory or possession thereof, or of any foreign country. Person also includes a trustee, receiver, assignee, or personal representative of a person;

(18) "reciprocal carrier" means a common carrier by water in foreign commerce recognized as a national carrier by the government of the reciprocal nation that contains the ocean port of origin or destination of the cargo that is subject to an intergovernmental maritime agreement;

(19) "reciprocal nation" means the foreign nation (or organization of foreign nations which have agreed among themselves to act for purposes of administration of their respective cargo preference laws as a single entity) which is the signatory to an intergovernmental maritime agreement;

(20) "shipper" means an owner or person for whose account the ocean transportation of goods is provided;

(21) "shippers' council" means an association of shippers or their agents, other than independent ocean freight forwarders and non-vessel-operating common carriers, established for the purpose of (A) mutual consultation and exchange of information or views in regard to general level of rates, rules, practices, patronage contracts or services, and (B) agreement upon common positions for the purpose of consultation and negotiation with common carriers by water in foreign commerce, conferences of such carriers, or the parties to intermodal agreements in regard to general levels of rates, rules, practices, or services;

(22) "tariff" means any schedule of rates, charges, classifications, rules, and regulations pertaining to ocean transportation or intermodal transportation and includes any supplement, amendment, or reissue;

(23) "territory or possession" includes the Commonwealth of the Northern Marianas, the Commonwealth of Puerto Rico, American Samoa, Guam, the United States Virgin Islands, and any other territory or possession of the United States; and

(24) "United States" or "State" includes the District of Columbia.

TITLE II—FEDERAL MARITIME COMMISSION; REPORTS TO CONGRESS; AUTHORIZATION OF APPROPRIATIONS; CONDITIONS UNFAVORABLE TO FOREIGN COMMERCE; GENERAL RULEMAKING AUTHORITY

SEC. 201. ANNUAL REPORTS TO CONGRESS; LEGISLATIVE PROPOSALS.

(a) No later than April 1 of each year, the Commission shall report to Congress a summary of its activities, expenditures, and receipts under this Act.

(b) Whenever it is of the opinion that a change in the laws administered by it is necessary, the Commission shall submit its legislative recommendations to Congress and simultaneously transmit them to the Executive Office of the President. No officer or agency of the United States shall have the authority to require the Commission to submit its legislative recommendations, testimony, or comments on legislation, or requests for appropriations, to any officer or agency of the United States prior to the submission of such recommendations, testimony, comments, or requests for appropriations to the Congress.

SEC. 202. AUTHORIZATION OF APPROPRIATIONS.

(a) Commencing with fiscal year 1982 appropriation of funds required to carry out the provisions of this Act and other laws administered by the Commission shall be subject to annual authorization.

(b) Authorization of appropriations to the Commission shall reflect the need for efficient and timely regulation of the various aspects of ocean commerce in relation to the growth of that commerce and international developments which may affect such need and the national defense goals of the Nation.

SEC. 203. RULES TO COUNTER CONDITIONS UNFAVORABLE TO FOREIGN COMMERCE.

(a) The Commission is authorized and directed in aid of the accomplishment of the objectives of this Act to make rules and regulations affecting shipping in the foreign commerce of the United States not in conflict with United States law in order to adjust or meet general or special conditions unfavorable to such shipping whether in any particular trade or upon any particular route or in foreign commerce generally, and which arise out of or result from foreign laws, rules, or regulations or from competitive methods or practices employed by owners, operators, agents, or masters of vessels of a foreign country.

(b) If, after preliminary investigation, the Commission has reasonable cause to believe that foreign laws, rules, or regulations or competitive methods or practices employed by owners, operators, agents or masters of vessels of a foreign country have resulted or will result in general or special conditions unfavorable to ocean shipping in foreign commerce whether in any particular trade or upon any particular route or in foreign commerce generally, the Commission may petition the United States district court of any district affected by such rules, regulations, methods, or practices or of any district in which the defendant transacts business, for appropriate injunctive relief pending the outcome of a proceeding pursuant to subsection (a) of this section with respect to such matter. Upon a showing that the Commission has reasonable cause to believe that such conditions do or will exist, a temporary or permanent injunction or restraining order which the court deems just and proper shall be granted without bond, notwithstanding any other provision of law.

SEC. 204. GENERAL RULEMAKING AUTHORITY.

The Commission may promulgate such rules and regulations as may be necessary to carry out the provisions of this Act and other laws administered by the Commission.

TITLE III—AGREEMENTS AND CONTRACTS

SEC. 301. AGREEMENTS REQUIRED TO BE FILED.

(a) Every common carrier by water in foreign commerce, conference of such carriers, or other person subject to this Act, shall file immediately with the Commission a copy, or, if oral, a complete memorandum, of every agreement with another such carrier or other person subject to this Act to which it may be a party or conform in whole or in part which involves transportation by water or related services in the foreign commerce of the United States, and which provides for—

(1) discussing, negotiating, fixing, or regulating transportation rates or fares;

(2) giving or receiving special rates, accommodations, or other special privileges or advantages;

(3) controlling, regulating, or preventing or destroying competition;

(4) pooling or apportioning earnings, losses, or traffic;

(5) allotting ports or restricting or otherwise regulating the number and character of sailings between ports;

(6) limiting or regulating in any way the volume or character of cargo to be carried; or

(7) any manner of exclusive, preferential, or cooperative working arrangement.

(b) Every common carrier by water in foreign commerce, or conference of such carriers, shall file immediately with the Commission a copy, or, if oral, a complete memorandum, of every agreement with any air carrier, rail carrier, motor carrier, or other common carrier by water which povides for—

(1) the establishment of through routes for the movement of cargo; or

(2) the fixing of through or joint rates, or concurrence in tariffs.

(c) A copy of every agreement among or between shippers or consignees concerning the establishment or operation of a shippers' council in the United States, or a complete memorandum of any such oral agreement, shall be filed immediately with the Commission.

(d) Every agreement submitted for approval pursuant to this section shall be accompanied by a statement setting forth the objectives of the parties and how the anticipated economic and transportation benefits of such agreement further the objectives of the declaration of policy set forth in section 101 of this Act.

(e) The Commission shall publish in the Federal Register a notice of every agreement submitted for approval pursuant to this section within 15 days of the submission of such agreement.

SEC. 302. AGREEMENTS NOT REQUIRED TO BE FILED.

(a) The provisions of section 301, sections 303 through 310, and section 316 of this title do not apply to—

(1) agreements to provide or furnish wharf, dock, warehouse, or other terminal facilities to the extent that such services or facilities are to be provided outside the United States, its territories or possessions;

(2) agreements which relate solely to transportation services between foreign countries; and

(3) agreements which relate to shippers' councils operating exclusively outside the United States.

(b) The provisions of section 301, and sections 303 through 310 of this title do not apply to patronage contracts as defined in section 102(16) of this Act.

SEC. 303. FORM OF AGREEMENT; REJECTION.

The Commission may by regulation prescribe the form and manner in which agreements shall be filed; and the Commission is authorized to reject any agreement which is not filed in conformity with such regulations

SEC. 304. ACTION ON AGREEMENTS.

The Commission shall, after notice and hearing, disapprove, cancel, or modify any agreement filed pursuant to section 301 of this title if the Commission finds such agreement to be inconsistent with the declaration of policy or other provisions of this Act. The Commission shall approve all other agreements.

SEC. 305. PRESUMPTION IN FAVOR OF CERTAIN AGREEMENTS.

The following agreements shall be presumed to be consistent with the declaration of policy and other provisions of this Act:

(1) agreements implementing intergovernmental maritime agreements;

(2) conference agreements which contain a right of independent action on reasonable notice;

(3) agreements which are endorsed favorably by all of the shippers' councils of the trades to which the agreement applies, except for agreements between or among shippers; and

(4) agreements relating to equipment interchange, terminal sharing, equipment standardization, or other technical matters.

SEC. 306. TEMPORARY APPROVAL.

(a) Notwithstanding any other provision of law, the Commission may, in its discretion, upon notice but without hearing or other proceeding, grant temporary approval for up to 1 year to any agreement filed pursuant to section 301 of this title pending the Commission's final disposition of the agreement under this title.

(b) In determining whether to grant temporary approval to an agreement pursuant to this section, the Commission shall consider whether:

(1) the parties to the agreement would be substantially harmed if the agreement were not immediately approved and implemented;

(2) any other persons would be substantially harmed, if temporary approval were granted; and

(3) it appears from all the information available to the Commission that temporary approval is necessary to meet an emergency or to fulfill an important public need.

(c) Actions to implement an agreement during a period of temporary approval granted pursuant to this section shall not be construed to be violations of this Act even if the agreement is subsequently disapproved, canceled or modified by the Commission pursuant to section 304 of this title.

SEC. 307. TIME LIMITS ON COMMISSION ACTION.

(a) Within 8 months of the date of filing of any agreement submitted to the Commission pursuant to section 301 of this title, the Commission shall approve, disapprove, or modify such agreement; however, the Commission may in its discretion and for good cause, extend this time period for an additional 4 months. Failure of the Commission to approve, disapprove, or modify any agreement within the time limits set forth in this subsection shall cause an agreement to be deemed approved.

(b) The Commission shall, within 45 days of the date of filing, grant or deny any request for temporary approval to any agreement pursuant to the authority contained in section 306 of this title. The Commission may withdraw such temporary approval at any time.

(c) The Commission may, at any time, after notice and hearing disapprove, cancel, or modify any agreement previously approved by it or deemed approved pursuant to subsection (a) of this section upon a finding that the agreement is inconsistent with the declaration of policy or other provisions of this Act.

SEC. 308. REQUIREMENT FOR INDEPENDENT ACTION.

The Commission shall not approve any agreement filed pursuant to section 301(a) or (b) nor shall continued approval be permitted for:

(1) any agreement between carriers not members of the same conference or between conferences of carriers serving different trades that would otherwise be naturally competitive, unless in the case of agreements between carriers, each carrier, or in the case of agreements between conferences, each conference, retains the right of independent action;

(2) any agreement which fails to provide that a member carrier of a conference or other rate fixing agreement has a right of independent action to serve any United States port designed for the accommodation of oceangoing vessels at the same ocean freight rates charged by the conference or rate-fixing body at the nearest port within the geographic scope of such conference or rate-fixing agreement; or

(3) any intermodal agreement which fails to provide for the right of independent action by air carriers, rail carriers, motor carriers or common carriers by water not subject to this Act to establish their portion of rates or changes or to establish rules and regulations which apply exclusively to the services performed by such carriers: *Provided*, That the requirements of this paragraph (3) shall not apply to agreements with any such carriers operating exclusively

within a foreign country or countries in implementing the agreement.

SEC. 309. ADMISSION TO AND WITHDRAWAL FROM CONFERENCES AND SHIPPERS' COUNCILS.

(a) The Commission shall, after notice and hearing, disapprove or modify any conference agreement filed pursuant to section 301(a) or (b) of this title which, by operation or effect, fails to provide reasonable and equal terms and conditions for admission or readmission to conference membership in the trade covered by the conference agreement or fails to provide that any member may withdraw from membership upon reasonable notice without penalty for such withdrawal. In any hearing under this subsection, the burden of proof shall be upon the persons whose agreement or practice is in question.

(b) The Commission shall, after notice and hearing, disapprove or modify any agreement relating to the establishment or operation of a shippers' council filed pursuant to section 301(c) of this title which, by operation or effect, fails to provide reasonable and equal terms and conditions for admission or readmission to council membership for any shipper whose commercial interests coincide with those of the council or which fails to provide that any member may withdraw from membership upon reasonable notice without penalty for such withdrawal. In any hearing under this subsection, the burden of proof shall be upon the persons whose agreement or practice is in question.

SEC. 310. POLICING OBLIGATIONS OF CONFERENCES AND CARRIERS; SHIPPERS' REQUESTS AND COMPLAINTS.

(a) The members of each conference agreement and every ocean common carrier in a trade that is not a party to a conference agreement relating to such trade shall engage the services of an independent neutral body to police the obligations of such conference, conference members, and nonmember carriers under this Act and the approved conference agreement, except that such policing by an independent neutral body shall not be required in any trade for which the Commission finds that the cost of such policing would be unreasonably large in comparison to the size of the trade. The Commission may disapprove any such conference agreement or may suspend for up to 12 months the tariff or tariffs of any such conference, conference member, or nonmember carrier, whenever it finds, after notice and hearing, inadequate policing of such obligations of such conference, conference member, or nonmember carrier.

(b) The Commission shall disapprove, cancel or modify any conference agreement or other rate-fixing agreement filed pursuant to section 301(a) or (b) of this title, after notice and hearing, upon a finding of failure or refusal to adopt or maintain reasonable procedures for promptly and fairly hearing and considering shippers' requests and complaints.

SEC. 311. PATRONAGE CONTRACTS.

Any common carrier by water in foreign commerce or conference that proposes to enter into a patronage contract shall submit such contract to the Commission in such form and manner as regulations of the Commission may provide. The Commission shall permit the use of any such patronage contract that meets the requirements of section 312 of this title and which is available to all shippers and consignees on equal terms and conditions, unless the Commission finds, after notice and hearing, that the contract will be inconsistent with the declaration of policy or other provisions of this Act. Agreements between shippers and carriers or conferences in implementation of any permission granted by the Commission pursuant to this section are exempted from the requirements of sections 301, 303, and 304 of this title.

SEC. 312. REQUIREMENTS IN PATRONAGE CONTRACTS.

The Commission shall not permit the use of any patronage contract unless it expressly—

(a) permits prompt release of the contract shipper from the contract with respect to any shipment or shipments for which the contracting carrier or conference of carriers cannot provide space requested on reasonable notice by the shipper;

(b) provides that whenever a tariff rate for the carriage of goods under the contract becomes effective, it shall not be increased on less than 60 days' notice unless specifically authorized by the Commission. A rate subject to the contract may be increased on not less than 30 days' notice if the increase is to a level no higher than that from which the particular rate was reduced within 180 days immediately preceding the filing of the increase;

(c) covers only those goods of the contract shipper for of which the contract shipper has the legal right at the time of shipment to select the carrier. It shall be deemed a breach of the contract if, before the time of shipment and with the intent to avoid its obligation under the contract, the contract shipper divests itself, or with the same intent permits itself to be divested, of the legal right to select the carrier and the shipment is carried by a carrier which is not a party to the contract;

(d) does not require the contract shipper to divert shipments of goods from natural routings not served by the carrier or conference of carriers where direct carriage is available;

(e) limits damages recoverable for breach by either party to actual damages to be determined after breach in accordance with the principles of contract law. The contract may specify, however, that in the case of a breach by a contract shipper the damages may be an amount not exceeding the freight charges computed at the contract rate on the particular shipment, less the cost of handling;

(f) permits the contract shipper to terminate the contract without penalty on 90 days' notice;

(g) permits the carrier or conference on 90 days' notice to terminate the contract rate system in whole or with respect to any commodity without penalty;

(h) provides for a spread between ordinary rates and rates charged contract shippers that is not greater than 18 percent of the ordinary rates if both shipper and consignee are parties to the contract, or that is not greater than 13 percent of the ordinary rates if only the shipper or the consignee is a party to the contract; and

(i) contains such other provisions as the Commission shall require.

SEC. 313. WITHDRAWAL OF PERMISSION TO USE PATRONAGE CONTRACTS.

The Commission shall withdraw permission for the use of any patronage contract if it finds, after notice and hearing, that the use of such contract is inconsistent with the declaration of policy or other provisions of this Act.

SEC. 314. REINSTATEMENT OF PATRONAGE CONTRACTS.

After termination of a patronage contract by the carrier or conference, or withdrawal of permission for the use of a patronage contract by the Commission, the carrier or conference shall not reinstate such contract or part thereof without prior permission by the Commission in accordance with the provisions of section 311 and 312 of this title.

SEC. 315. EXEMPTIONS FROM ANTITRUST LAWS.

(a) The antitrust laws of the United States shall not apply to:

(1) an agreement described in section 301 or 302 of this title or any activity described in section 301 or 302 of this title; and

(2) a patronage contract, as defined in section 102(16) of this Act, or any activity pursuant to a patronage contract.

(b) For the purposes of this Act, the antitrust laws of the United States shall include: the Act of July 2, 1890 (ch. 647, 26 Stat. 209), as amended; the Act of October 15, 1914 (ch. 323, 38 Stat. 730), as amended; the Federal Trade Commission Act (38 Stat. 717), as amended; sections 73 and 74 of the Act of August 27, 1894 (28 Stat. 570), as amended; the Act of June 19, 1936 (ch. 592, 49 Stat. 1526), as amended; the Antitrust Civil Process Act (76 Stat. 548), as amended; and amendments and Acts supplementary thereto.

SEC. 316. UNLAWFUL AGREEMENTS AND PATRONAGE CONTRACTS.

(a) It shall be unlawful for any agreement or patronage contract subject to this title to be implemented without prior Commission approval or permission.

(b) Whoever violates subsection (a) of this section shall be subject to a civil penalty of not more than $25,000 for each day that the agreement or patronage contract is in effect without Commission approval or permission.

TITLE IV—TARIFFS AND RATES

SEC. 401. REQUIREMENTS FOR FILING AND CONTENT OF TARIFFS.

(a) Every common carrier by water in foreign commerce and every conference of such carriers shall file with the Commission, and keep open to public inspection, tariffs showing all the rates and charges of such carrier or conference between all points on its own route and on any through route which has been established in the foreign commerce of the United States. Such tariffs shall plainly indicate the places between cargo will be carried, shall list each classification of cargo in use, and shall also state separately each additional charge, privilege, or facility under the control of the carrier or conference which is granted or allowed, and any rules or regulations which in any way change, affect, or determine any part or the aggregate of such rates or charges, and shall include sample copies of any bill of lading, contract of affreightment, or other document evidencing the transportation agreement.

(b) The Commission shall by regulation prescribe the form and manner in which the tariffs required by this title shall be published and filed and is authorized to reject any tariff which is not in conformity with this title and with such regulations. Upon rejection by the Commission, a tariff shall be void and its use unlawful.

SEC. 402. EXCEPTION TO FILING REQUIREMENTS.

The requirements of this title shall not be applicable to cargo loaded and carried in bulk without mark or count or to cargo which is softwood lumber. As used in this section, the term "softwood lumber" means softwood lumber not further manufactured than passing lengthwise through a standard planing machine and crosscut to length, logs, poles, piling, and ties, including such articles preservatively treated, or bored, or framed, but not including plywood or finished articles knocked down or set up.

SEC. 403. PUBLIC AVAILABILITY OF TARIFFS.

Copies of such tariffs shall be made available to any person and a reasonable charge may be assessed for them.

SEC. 404. RATES FOR BARGING AND AFFREIGHTING OF CONTAINERS.

(a) Notwithstanding chapter 107 of subtitle IV of title 49, United States Code, or any other provision of law, rates and charges for the barging and affreighting of containers and containerized cargo by barge between points in the United States, shall be filed

solely with the Commission, in accordance with rules and regulations promulgated by the Commission, if:

(1) the cargo is moving between a point in a foreign country and a point in the United States, or a territory or possession of the United States;

(2) the transportation by barge between points in the United States is furnished by a terminal operator as a service substitute in lieu of a direct vessel call by the common carrier by water in foreign commerce transporting the containers or containerized cargo under a through bill of lading;

(3) such terminal operator is a municipality, or other public body or agency subject to the jurisdiction of the Commission, and the only one furnishing the particular circumscribed barge service in question as of the date of enactment of this section; and

(4) such terminal operator is in compliance with the rules and regulations of the Commission for the operation of such barge service.

A terminal operator providing services described in this subsection shall be subject to the provisions of this Act.

(b) The Commission shall promulgate rules and regulations for the barge operations described in subsection (a) of this section. Such rules shall provide that the rates charged shall be based upon factors normally considered by a regular commerical operator in the same service.

SEC. 405. RATE CHANGES.

(a) No change shall be made in rates, charges, classifications, rules, or regulations, nor shall any new or initial rate be instituted, except by the publication and filing of a new tariff or tariffs with the Commission. Each such new tariff or tariffs shall plainly show the changes proposed to be made in the tariff or tariffs then in force and the date when the rates, charges, classifications, rules, or regulations as changed are to become effective.

(b) Except as provided in section 406 of this title, no new tariff or tariffs published and filed with the Commission pursuant to subsection (a) of this section may become effective earlier than:

(1) Fifteen days after the date of such publication and filing in the case of a proposed reduction in rates or charges; or

(2) Thirty days after the date of such publication and filing in the case of any other proposed change in rates, charges, classifications, rules, or regulations.

SEC. 406. COMMISSION DISCRETION IN RATE CHANGES.

The Commission, in its discretion and for good cause, may allow changes and new or initial rates to become effective upon less than the period specified in section 405 of this title.

SEC. 407. ADHERENCE TO PUBLISHED RATES BY CARRIERS.

(a) No common carrier by water in foreign commerce or other person subject to this Act shall charge, demand, or receive a greater, less, or different compensation for the transportation of cargo or for any related service than the rates or charges specified in its applicable tariffs in effect at that time.

(b) No common carrier by water in foreign commerce, nor any officer, employee or agent thereof, shall—

(1) rebate, refund or remit in any manner or by any device any portion of the rates or charges specified in the applicable tariffs in effect at that time;

(2) extend or deny to any person any privilege, concession, equipment, or facility, except in accordance with any such tariffs; or

(3) allow any person to obtain transportation of cargo at less than the rates or charges specified in such tariffs by any other means.

SEC. 408. ADHERENCE TO PUBLISHED RATES BY SHIPPERS AND OTHER PERSONS SUBJECT TO THE ACT.

Except as permitted by the Commission under section 409 of this title and except with respect to negotiations relating to future shipments, no shipper, consignee, forwarder, other persons subject to this Act, nor any officer, employee, or agent thereof, shall receive, demand, obtain or attempt to obtain by any device or means, transportation of cargo by a common carrier by water in foreign commerce or conference of such carriers, or any service related thereto, at less than the rates and charges specified in applicable tariffs of that carrier or conference on file with the Commission and in effect at that time. However, neither the penalty prescribed by section 420 of this title nor any other penalty shall be imposed upon any shipper or other person subject to this Act for a violation of this section that occurs because of clerical or administrative error or inadvertence on the part of the shipper or other person subject to this Act.

SEC. 109. PERMISSION TO DEPART FROM TARIFFS.

Upon application of a common carrier by water in foreign commerce, a conference of such carriers, or a shipper, the Commission may, in its discretion and for good cause shown, permit such a carrier or conference to refund a portion of freight charges collected from a shipper where it appears that there is an error in a tariff of a clerical or administrative nature or an error due to inadvertence in failing to file a new tariff and that such refund will not result in discrimination among shippers, ports, or carriers. This permission may not be granted unless the carrier or conference has, prior to applying for authority to make refund, or in the case of an application filed by a shipper, within 20 days after the application, filed a new tariff with the Commission setting forth the rate on which the refund would be based, and the carrier or conference agrees that if permission is granted by the Commission, an appropriate notice will be published in the tariff, or such other steps taken as the Commission may require which give notice of the rate on which the refund would be based, and additional refunds as appropriate shall be made with respect to other shipments in the manner prescribed by the Commission in its order approving the application. Any application for refund pursuant to this section must be filed with the Commission within 180 days from the date of shipment.

SEC. 410. DISAPPROVAL OF RATES IN FOREIGN COMMERCE.

The Commission shall disapprove any rate or charge filed by a common carrier by water in foreign commerce or conference of such carriers which, after notice and hearing, it finds to be so unreasonably high or low as to be detrimental to the commerce of the United States or in violation of any of the prohibitions contained in title V of this Act.

SEC. 411. RATE DISPARITIES.

Upon the complaint of an exporter from the United States or an association representing such exporters, the Commission may disapprove any rate or charge of a common carrier by water in foreign commerce or conference of such carriers for the carriage of cargo from the United States to any foreign country if, allowing for differences in cost due to variances in relevant transportation factors, such rate or charge is higher than the rate or charge of that carrier or conference for the carriage of cargo which moves under the same commodity description from:

(a) that foreign country to the United States; or

(b) a third country to that foreign country.

SEC. 412. RATES OF CONTROLLED CARRIERS.

No controlled carrier shall maintain rates or charges in its tariffs filed with the Commission that are below a level which is just and reasonable, nor shall any such carrier establish or maintain unjust or unreasonable classifications, rules, or regulations in such tariffs. An unjust or unreasonable classification, rule, or regulation means one which results or is likely to result in the transportation or handling of cargo at rates or charges which are below a level which is just and reasonable.

SEC. 413. CRITERIA FOR DETERMINING JUST AND REASONABLE RATES OF CONTROLLED CARRIERS.

In determining whether rates, charges, classifications, rules, or regulations of a controlled carrier are just and reasonable, the Commission may take into account transportation factors, including but not limited to, whether (a) the rates or charges which have been filed or which would result from the pertinent classifications, rules, or regulations are below a level which is fully compensatory to the controlled carrier based upon that carrier's actual costs or, at the Commission's discretion, upon constructive costs, which are defined as the costs of a carrier, other than a controlled carrier, operating similar vessels and equipment in the same or a similar trade; (b) the rates, charges, classifications, rules, or regulations are the same as or similar to those filed or assessed by other carriers in the same trade; (c) the rates, charges, classifications, rules, or regulations are required to assure movement of particular cargo in the trade; or (d) the rates, charges, classifications, rules, or regulations are required to maintain acceptable continuity, level, or quality of common carrier service to or from affected ports.

SEC. 414. BURDEN OF PROOF AND DISAPPROVAL OF UNJUST AND UNREASONABLE CONTROLLED CARRIER RATES.

The Commission may at any time, after notice and hearing, disapprove any rates, charges, classifications, rules, or regulations which a controlled carrier has failed to demonstrate to be just and reasonable. In any proceeding under sections 412 or 413 of this title, the burden of proof shall be on the controlled carrier to demonstrate that its rates, charges, classifications, rules, or regulations are just and reasonable.

SEC. 415. JUSTIFICATION OF CONTROLLED CARRIER RATES.

Within 20 days of a request by the Commission, a controlled carrier shall file a statement of justification which details the need and purpose for its existing or proposed rates, charges, classifications, rules, or regulations.

SEC. 416. SUSPENSION OF RATES AND ISSUANCE OF SHOW CAUSE ORDERS TO CONTROLLED CARRIERS.

(a) Whenever the Commission is of the opinion that the rates, charges, classifications, rules, or regulations filed by a controlled carrier may be unjust and unreasonable, the Commission may issue an order to that carrier to show cause why such rates, charges, classifications, rules, or regulations should not be disapproved.

(b) Pending a determination as to their lawfulness in such a proceeding, the Commission may suspend such rates, charges, classifications, rules, or regulations:

(i) at any time prior to their effective date, or

(ii) on not less than 60 days' notice in the case of rates, charges, classifications, rules, or regulations which have already become effective.

(c) In no event may the total period or periods of suspension pursuant to this section exceed 180 days.

(d) Whenever the Commission has suspended any rates, charges, classifications, rules, or regulations pursuant to this section, the affected carrier may file new rates, charges, classifications, rules, or regulations to take effect immediately during the sus-

pension period. The Commission may reject such new rates, charges, classifications, rules, or regulations if it is of the opinion that they are unjust and unreasonable.

SEC. 417. EFFECT OF REJECTION, SUSPENSION, OR DISAPPROVAL.

Rates, charges, classifications, rules, or regulations of a controlled carrier which have been rejected, suspended, or disapproved by the Commission are void and their use is unlawful.

SEC. 418. PRESIDENTIAL REVIEW OF ORDERS AFFECTING CONTROLLED CARRIERS.

The Commission shall transmit to the President, concurrently with its service, any order of suspension or final order of disapproval of rates, charges, classifications, rules, or regulations of a controlled carrier. Within 20 days after the receipt of such Commission order, the President may request the Commission in writing to stay the effect of its order for reasons of national defense or foreign policy, which reasons shall be specified in the request. Notwithstanding any other provision of law, the Commission shall comply with such request.

SEC. 419. CONTROLLED CARRIERS EXEMPT FROM REGULATION.

The provisions of sections 412 through 418 of this title shall not apply to:

(a) rates, charges, classifications, rules, or regulations of a controlled carrier in any particular trade which are established pursuant to a conference or other rate fixing agreement approved under title III of this Act, other than an agreement in which all of the members are controlled carriers not otherwise excluded from the provisions of this title;

(b) rates, charges, classifications, rules, or regulations governing the transportation of cargo by a controlled carrier between the country by whose government it is owned or controlled, as defined in section 102(8) of this title, and the United States, or any of its territories or possessions;

(c) a trade served exclusively by controlled carriers;

(d) any controlled carrier of a nation whose vessels are entitled by a treaty of the United States to receive national or most-favored-nation treatment; or

(e) any controlled carrier of a nation which, on or before November 17, 1978, had subscribed to the statement of shipping policy contained in note 1 to annex A of the Code of Liberalization of Current Invisible Operations, adopted by the Council of the Organization for Economic Cooperation and Development.

SEC. 420. PENALTIES.

(a) Whoever violates sections 407(b) or 408 of this title shall be subject to a civil penalty of not less than $10,000 nor more than $25,000 for each such violation.

(b) In addition to the penalty set forth in subsection (a) of this section, the Commission may suspend, for a period not exceeding 12 months, any or all tariffs of a common carrier by water in foreign commerce if such carrier or an officer, employee, or agent of such carrier is found to have violated section 407(b), or may suspend the carrier's right to use any or all conference tariffs to which it may subscribe.

(c) For the purposes of fixing penalties for violations of section 407, 408, or 417 of this title, each shipment on which a rebate or concession was made, or in connection with which an unlawful rate or charge was collected or received, shall constitute a separate violation. A shipment means all of that cargo the carriage of which is evidenced by a single bill of lading.

(d) Whoever violates section 417 shall be subject to a civil penalty of not less than $5,000 nor more than $10,000 for each shipment accepted in violation thereof.

(e) Whoever violates any other provision of this title shall be subject to a civil penalty of not more than $5,000 for each such violation.

TITLE V—DISCRIMINATION, PREFERENCE, PREJUDICE, AND OTHER PROHIBITED ACTS

SEC. 501. DEFERRED REBATES.

No common carrier by water in foreign commerce shall pay or allow, or enter into any combination, agreement, or understanding, express or implied, to pay or allow a deferred rebate to any shipper.

SEC. 502 PROHIBITED PREDATORY PRACTICES.

Except as authorized by the Commission pursuant to title III of this Act, no common carrier by water in foreign commerce, nor shipper, nor other person subject to this Act nor any group of such carriers or other persons shall engage in any practice or activity for the purpose of excluding, preventing, reducing or destroying competition.

SEC. 503. PROHIBITED TREATMENT OF SHIPPERS.

Except as permitted by the terms of its tariff, no common carrier by water in foreign commerce shall refuse or threaten to refuse space accommodations or other transportation services or equipment to any shipper when such are available; nor shall any common carrier by water in foreign commerce discriminate against or unfairly treat a shipper because it has patronized any other carrier, has filed a complaint charging unfair treatment, or for any similar reason.

SEC. 504. UNREASONABLE PREFERENCE OR PREJUDICE.

(a) It shall be unlawful for any common carrier by water in foreign commerce, shipper or other person subject to this Act, either alone or in conjunction with any other person, directly or indirectly, to make or give any undue or unreasonable preference or advantage to any particular person, port, locality, or description of traffic in any respect whatsoever, or to subject any particular person, port, locality, or description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

(b) Within 30 days after the effective date or the filing with the Commission, whichever is later, of any conference rate, rule, or regulation in the foreign commerce of the United States, the Governor of any State, territory or possession of the United States may file a protest with the Commission upon the ground that the rate, rule, or regulation subjects that State, territory or possession to undue or unreasonable prejudice or disadvantage or results in undue or unreasonable preference or advantage to some other State, territory or possession, in which case the Commission shall issue an order to the conference to show cause why the rate, rule, or regulation should not be canceled. Within 180 days from the date of issuance of such order, the Commission shall determine whether or not such rate, rule, or regulation results in undue or unreasonable prejudice or disadvantage and shall issue a final order either dismissing the protest or cancelling the rate, rule, or regulation.

SEC. 505. UNJUST DISCRIMINATION.

No common carrier by water in foreign commerce shall demand or collect any rate or charge or engage in any practice whether by tariff publication or otherwise which is unjustly discriminatory between shippers or between ports or unjustly prejudicial to exporters of the United States as compared with their foreign competitors. Whenever the Commission finds, after notice or hearing, that such a carrier has demanded or collected any such rate or charge, or engaged in any such practice, it may alter the same to the extent necessary to correct such unjust discrimination and shall order the carrier to discontinue demanding or collecting any such rate or charge or engaging in any such practice. Upon a finding of unjust discrimination in a complaint proceeding pursuant to section 801 of this Act, the Commission may award reparation to a complainant on the basis of the damages sustained.

SEC. 506. UNJUST REGULATIONS AND PRACTICES.

No common carrier by water in foreign commerce nor any other person subject to this Act shall establish, observe, or enforce unjust or unreasonable regulations or practices relating to or connected with the receiving, handling, storing, or delivering of property. Whenever the Commission finds that any such regulation or practice is unjust or unreasonable it may determine, prescribe, and order enforcement of a just and reasonable regulation or practice.

SEC. 507. DISCONTINUANCE OF PROHIBITED PRACTICES.

Upon a finding of a violation of any provision of this title, the Commission shall order the common carrier by water in foreign commerce, shipper or other person subject to this Act to discontinue such unlawful activity.

SEC. 508. PENALTIES.

Whoever violates any provision of this title shall be subject to a civil penalty of not less than $5,000 nor more than $25,000 for each such violation.

TITLE VI—LICENSING AND BONDING

PART A—FREIGHT FORWARDING LICENSES

SEC. 601. PROHIBITION AGAINST FREIGHT FORWARDING WITHOUT A LICENSE.

No person shall engage in freight forwarding as defined in this Act in connection with any shipment unless the person has been issued a license by the Commission, except that a person whose primary business is the sale of merchandise may forward shipments of such merchandise for his own account without a license.

SEC. 602. LICENSING.

An independent ocean freight forwarder's license shall be issued to any person who is not a shipper or consignee or a seller or purchaser of property to foreign countries and who the Commission determines is otherwise qualified. All licenses issued prior to the effective date of this Act, shall be deemed to have been issued under this Act: *Provided*, That a bond or other security required by the Commission under section 603 is filed within 90 days after the effective date of this Act.

SEC. 603. BOND REQUIREMENT.

No independent ocean freight forwarder's license shall be issued or remain in force unless the license applicant or holder shall have furnished a bond in an amount to be determined by the Commission, but in no event less than $50,000. Bonds shall be issued only by surety companies found acceptable by the United States Department of the Treasury.

SEC. 604. REVOCATION OF LICENSES.

(a) Licenses of independent ocean freight forwarders shall be effective from the date of issue and until suspended or revoked. Any such license may, upon application of the holder, be amended or revoked, in whole or in part, or may, upon complaint, or on the Commission's own initiative, after notice and hearing, be suspended or revoked for willful failure to comply with any provision of this Act or with any lawful order, rule, or regulation of the Commission.

(b) Any person whose license has been revoked with prejudice upon a finding of a violation of this Act, or the rules and regulations of the Commission, or any responsible officer, manager, or employee of such person whose actions have been found, after notice and hearing, to have contributed directly to such violation, may not be licensed

nor associated with a licensee in an ownership or management capacity, for a period of 5 years after such finding. Subsequent to this 5-year period applications for licenses by such persons shall not be approved unless the Commission is satisfied that the person will refrain from any further activity in violation of this Act, or of the rules and regulations of the Commission.

SEC. 605. COMPENSATION OF FORWARDERS BY CARRIERS.

(a) Except as otherwise provided in subsection (c) of this section a common carrier by water in foreign commerce shall compensate an independent ocean freight forwarder in connection with any cargo shipment dispatched on behalf of others only when the independent ocean freight forwarder is licensed and has performed all of the following services:

(1) engaged, booked, secured, reserved, or contracted directly with the carrier or its agent for space aboard a vessel or confirmed the availability of such space;

(2) prepared and processed the ocean bill of lading with respect to such cargo; and

(3) prepared and processed the dock receipt or other documents which are normally the responsibility of the carrier.

(b) A common carrier by water in foreign commerce shall not pay compensation for services described in subsection (a) of this section more than once on the same cargo shipment.

(c) No compensation for freight forwarding services shall be paid to or received by any person until there is written certification by that person to the common carrier by water in foreign commerce that such person:

(1) is licensed by the Commission as an independent ocean freight forwarder; and

(2) performed the services specified in subsection (a) of this section with respect to such shipment.

(d) A common carrier by water in foreign commerce shall not pay compensation for freight forwarding services as provided in this section to its agents or any other common carrier by water or its agents.

(e) Every tariff of a common carrier by water in foreign commerce filed pursuant to section 401 of this Act shall specify the rate of compensation to be paid licensed independent ocean freight forwarders who have provided the certification required under subsection (c) of this section and no such compensation shall be paid except in accordance with such tariff provisions.

(f) An independent ocean freight forwarder shall not be entitled to receive compensation from a common carrier with respect to any shipment in which such freight forwarder has a beneficial interest or with respect to any shipment in which any holding company, subsidiary, affiliate or associate of such freight forwarder or any officer, director, agent or executive of such freight forwarder directly or indirectly has a beneficial or pecuniary interest.

PART B—NON-VESSEL-OPERATING COMMON CARRIERS

SEC. 606. BONDING REQUIREMENTS.

Every non-vessel-operating common carrier located in the United States, or a territory or possession of the United States, shall file with the Commission, simultaneously with the filing of its tariffs, a bond in the amount of $100,000 to ensure its financial responsibility to the users of its services. Such bonds shall be issued only by a surety company found acceptable by the United States Department of the Treasury. Such common carriers maintaining effective tariffs on file with the Commission on the date of enactment of this Act shall file the required bonds within 90 days after the date of enactment of this Act.

TITLE VII—EXEMPTIONS

SEC. 701. EXEMPTIONS FROM REGULATION.

The Commission may, by order or rule, exempt any class of agreements subject to this Act or any specified activity subject to this Act from any requirement of this Act if the provisions of this title are met.

SEC. 702. CRITERIA FOR GRANTING EXEMPTIONS.

A rule or order of exemption may be issued only after notice and opportunity for hearing and only if the Commission determines that the exemption will not (1) substantially impair effective regulation by the Commission, (2) be unjustly discriminatory, or (3) be inconsistent with the declaration of policy or other provisions of this Act.

SEC. 703. CONDITIONS; REVOCATION OF EXEMPTIONS.

The Commission may attach any conditions to exemptions granted under this title, and may revoke any such exemption after notice and opportunity for hearing.

TITLE VIII—COMMISSION PROCEEDINGS: SUBPENAS AND DISCOVERY; ENFORCEMENT OF COMMISSION ORDERS; PENALTIES

SEC. 801. FILING OF COMPLAINTS.

Any person may file with the Commission a sworn complaint alleging a violation of this Act by a common carrier by water in foreign commerce, shipper, or other person subject to this Act, and may seek reparation for any injury caused by that violation.

SEC. 802. SATISFACTION OR INVESTIGATION OF COMPLAINTS.

The Commission shall furnish a copy of a complaint filed pursuant to section 801 of this title to the carrier, shipper, or other person named therein, who shall, within a reasonable time specified by the Commission, satisfy the complaint or answer it in writing. If the complaint is not satisfied, the Commission shall investigate it in such manner and by such means, and make such order as it deems proper.

SEC. 803. REPARATION UPON COMPLAINT.

If the complaint is filed pursuant to section 801 of this title within 1 year after the cause of action accrued, the Commission may direct the payment of reparation to the complainant.

SEC. 804. COMMISSION INVESTIGATIONS AND SUBPENAS.

The Commission may, upon its own motion, investigate any suspected violation of this Act in the manner and by the means it deems proper. In any such investigation the Commission may, by subpena, compel the attendance of witnesses and the production of books, papers, documents, and other evidence, in accordance with its rules and regulations. Attendance of witnesses and the production of books, papers, documents, and other evidence in response to subpena may be required at any designated place. Witnesses shall, unless otherwise prohibited by law, be entitled to the same fees and mileage as provided by courts of the United States.

SEC. 805. DISCOVERY AND SUBPENAS IN COMMISSION PROCEEDINGS.

(a) In adjudicatory proceedings under this title, and in any other proceeding in which the Commission deems it necessary and proper, depositions, written interrogatories, and discovery procedure may be utilized by any party under rules and regulations issued by the Commission. Such rules and regulations shall, to the extent practicable, be in conformity with the rules applicable in civil proceedings in the district courts of the United States. The subpena powers vested in the Commission in section 804 shall be applicable to all adjudicatory proceedings under this title.

(b) Failure or refusal by any common carrier by water in foreign commerce or other person subject to this Act to comply fully with any subpena or duly issued order compelling an answer to interrogatories or to designate questions propounded by deposition or compelling production of documents in connection with any adjudicatory proceeding conducted pursuant to this title, shall authorize the Commission, in addition to any other authority granted to it by section 812 of this title or other provisions of this Act, to suspend after appropriate notice and opportunity for hearing, any or all tariffs filed with the Commission by or on behalf of such common carrier or such other person, or, in the case of conference tariffs, any or all rights of such common carrier to utilize such tariffs until a full response has been given to the pertinent deposition, interrogatory, production request or motion, or subpena. During any period of suspension ordered pursuant to this subsection, the Commission may reject any new tariff matter which is filed to replace in whole or part that which has been suspended. Any tariff suspension order issued pursuant to this subsection shall be immediately submitted to the President who may, within 10 days after receiving it, disapprove such order if the President finds that disapproval is required for reasons of the national defense or the foreign policy of the United States. Any common carrier by water in foreign commerce or other person whose tariffs or rights of use thereof have been suspended pursuant to this subsection and who accepts or handles cargo for transportation during the suspension period, which cargo otherwise would have been governed by the provisions of the suspended tariffs, shall be subject to a civil penalty of not less than $5,000 nor more than $50,000 for each shipment so accepted or handled.

(c) If, in failing or refusing to comply with a subpena or discovery order issued under subsection (a) of this section, a common carrier by water in foreign commerce or other person alleges documents or information are located in a foreign country and cannot be produced because of the laws of that country, the Commission, upon ordering the suspension of tariffs or use thereof by such common carrier or other person, shall also notify the Secretary of State of such failure to comply and of the allegation relating to foreign laws. Upon receiving such notification, the Secretary of State shall promptly consult with the government of the nation within which the documents or information are alleged to be located for the purpose of assisting the Commission in obtaining the documents or information sought.

SEC. 806. FILING OF PERIODIC OR SPECIAL REPORTS.

(a) The Commission may, by order, require any common carrier by water in foreign commerce, shipper, consignee, or other person subject to this Act, or any officer, receiver, trustee, lessee, agent, or employee thereof, to file with it any periodic or special report, or any account, record, rate, or charge, or any memorandum of any facts and transactions pertaining to the business of such carrier or other person subject to this Act. The Commission may prescribe the form and manner in which such reports shall be made and may require specific and complete answers to questions upon which it may deem information to be necessary, or the creation of memorandums or reports concerning transactions, facts, or practices in connection with which documents may not already exist.

(b) The Commission shall require the chief executive officer of every vessel operating common carrier by water in foreign com-

merce and, to the extent it deems feasible, may require any shipper, consignor, consignee, forwarder, broker, other carrier or other person subject to this Act, to file a periodic, written certification under oath with the Commission attesting to—

(1) a policy prohibiting the payment, solicitation, or receipt of any rebate which is unlawful under the provisions of this Act;

(2) the fact that such policy has been promulgated recently to each owner, officer, employee, and agent thereof;

(3) the details of the efforts made, within the company or otherwise, to prevent or correct illegal rebating; and

(4) a policy of providing full cooperation to the Commission in its investigation of illegal rebating or refunds in United States foreign trades; and in its efforts to end such illegal practices.

(c) Whoever fails to file any report, account, record, rate, charge, or memorandum required pursuant to this section shall be subject to a civil penalty of not more than $5,000 for each day of default.

(d) In addition to the civil penalty provided in subsection (c) of this section, whoever fails to file any report, account, record, rate, charge, or memorandum required pursuant to this section shall be subject to the same sanctions as provided by subsection 805 (b) of this Act for failure to comply with subpenas or discovery orders.

(e) Whoever willfully falsifies, destroys, mutilates, or alters any report, account, record, rate, charge, or memorandum required pursuant to this section, or willfully files a false report, account, record, rate, charge, or memorandum required pursuant to this section, shall be subject to a civil penalty of not less than $5,000, nor more than $25,000.

SEC. 807. ISSUANCE OF ORDERS.

Orders of the Commission relating to any violation of this Act or of any Commission rule or regulation issued pursuant to it shall be made only after opportunity for hearing, and upon a sworn complaint or in proceedings instituted on the Commission's own motion.

SEC. 808. REPORT OF COMMISSION INVESTIGATIONS.

The Commission shall issue and furnish to all parties a written report of every investigation made under this Act in which a hearing has been held. Such report shall state its conclusions, decision, and order, and, if reparation is awarded, the findings of fact on which the award is made.

SEC. 809. EVIDENTIARY COMPETENCE OF COMMISSION REPORTS.

The Commission may publish reports of Commission investigations in the form best adapted for public information and use, and such publications shall, without further proof or authentication, be competent evidence of such reports in all courts of the United States and the States, territories, and possessions thereof.

SEC. 810. REVERSAL OR MODIFICATION OF COMMISSION ORDERS.

The Commission may reverse, suspend, or modify any of its orders in any manner that it deems proper. Upon application of any party to a proceeding, the Commission may reconsider its decision, order, or any matter determined therein, but no such application for or granting of reconsideration shall, except by special order of the Commission, operate as a stay of such order.

SEC. 811. EFFECTIVE PERIOD OF COMMISSION ORDERS.

All orders of the Commission made under this Act shall continue in force for the period of time specified in the order, or until suspended, modified, or set aside by the Commission or by a court of competent jurisdiction

SEC. 812. ENFORCEMENT OF ORDERS.

In the case of violation of any order of the Commission, other than for the payment of reparation, or in case of a failure by a person to comply fully with any subpena issued by the Commission, the Commission, any party injured by the violation, or the Attorney General of the United States, may seek enforcement in any United States district court having jurisdiction over the parties, and if, after hearing, the court determines that the order was properly made and duly issued, it shall enforce the order by an appropriate injunction or other process, mandatory or otherwise.

SEC. 813. ENFORCEMENT OF ORDERS FOR THE PAYMENT OF REPARATION.

(a) In the case of violation of any order of the Commission for the payment of reparation, the person to whom such award was made may seek enforcement of such order in any United States district court having jurisdiction over the parties.

(b) In any United States district court, the findings and order of the Commission shall be prima facie evidence of the facts stated, and the petitioner shall not be liable for costs, nor for the costs of any subsequent stage of the proceedings unless they accrue upon the petitioner's appeal. A petitioner in a United States district court who prevails, shall be allowed a reasonable attorney's fee, to be assessed and collected as part of the costs of the suit.

(c) All parties in whose favor the Commission has made an award of reparation by a single order my be joined as plaintiffs, and all parties against whom such award has been made by a single order may be joined as defendants, in a single unit in any district in which any one such plaintiff could maintain a suit against any one such defendant. Service of process against any such defendant not found in that district may be made in any district in which is located any office of, or point of call on a regular route operated by, such defendant. Judgment may be entered in favor of any plaintiff against defendant liable to that plaintiff.

(d) No action seeking enforcement of any order for the payment of reparation may be filed later than 1 year from the date of the order.

SEC. 814. AUTHORITY TO SEEK INJUNCTION.

Whenever in the judgment of the Commission any person has engaged or is about to engage in any acts or practices which (1) constitute or will constitute a violation of any provision of this Act or any regulation or order issued thereunder, and (2) would result in substantial detriment to the foreign ocean commerce of the United States or would irreparably injure a common carrier by water or other person subject to this Act, the Commission may make application to an appropriate district court of the United States for an order enjoining such acts or practices, or for an order enforcing compliance with such provision or regulation. Upon a showing that the Commission has reasonable cause to believe that such a violation has been or is about to be committed, a temporary or permanent injunction or restraining order which the court deems just and proper shall be granted without bond, notwithstanding any other provision of law.

SEC. 815. RESIDENT AGENT.

Each common carrier by water and other person subject to this Act shall maintain a resident agent in the United States for purpose of service of process.

SEC. 816. GENERAL PENALTY.

Whoever violates any provision of this Act, except where a different penalty is provided, shall be subject to a civil penalty of not less than $5,000 nor more than $25,000 for each such violation.

SEC. 817. PENALTY FOR VIOLATION OF RULE OR ORDER.

Whoever violates any order, rule, or regulation of the Commission shall, except where a different penalty is provided, be subject to a civil penalty of not less than $1,000 nor more than $5,000 for each day such violation exists.

SEC. 818. CRIMINAL CONSPIRACY LIMITATIONS.

Notwithstanding any other provision of law, no fine or other punishment shall be imposed on any person for criminal conspiracy to violate any provision of this Act or to defraud the Commission by concealment of any such violation.

SEC. 819. AUTHORITY TO ASSESS OR COMPROMISE CIVIL PENALTIES.

(a) Notwithstanding any other provision of law, the Commission shall have authority to assess or compromise all civil penalties provided in this Act.

(b) Any civil penalty provided in this Act shall be assessed only after a formal proceeding under section 804 of this title. No such proceeding shall be commenced later than 5 years from the date when the violation occurred. In determining whether to commence a proceeding to assess penalties under this Act and in adjudicating the level of such penalties, the Commission shall not be influenced by the nationality of the person nor the flag of the vessel involved in the violations.

TITLE IX—INTERGOVERNMENTAL MARITIME AGREEMENTS

SEC. 901. CRITERIA FOR AGREEMENTS.

(a) No intergovernmental maritime agreement which provides or limits access to cargo in the foreign commerce or foreign trade of the United States shall be entered into by the United States Government, unless such agreement satisfies the following criteria:

(1) membership and participation are open at all times, and without unreasonable delays, to all United States-flag carriers applying to serve the trade;

(2) membership and participation are open at all times, and without unreasonable delays, to all reciprocal carriers applying to serve the trade, unless the reciprocal nation elects to limit the participation of its national carriers;

(3) the collective share of the United States-flag carriers is not less than the collective share of the reciprocal carriers;

(4) there is full and free competition among United States-flag carrier members of the agreement for liner cargo within the United States share if the United States-flag carrier members, including any newly admitted member, are not in unanimous commercial agreement as to negotiated subshares;

(5) all common carriers by water in foreign commerce participating in the trade shall be subject to effective neutral body policing;

(6) there are no provisions in the agreement and no requirements of the reciprocal nation, which discriminate against, or limit entry by, or unreasonably inhibit or restrict operations of, any United States-flag carrier beyond limitations permitted under subsections (a) through (e) of this section; and

(7) there are no provisions in the agreement and no requirements of the reciprocal nation that are unjustly discriminatory to United States shippers, exporters, importers, or ports or between exporters from the United States and their foreign competitors.

(b) The provisions of paragraphs (a)(4) through (a)(7) of this section shall not apply to intergovernmental maritime agree-

ments which cover the trades between the United States and Western Hemisphere nations with which the United States had in force on May 1, 1979, a Memorandum of Understanding or a Memorandum of Consultation concerning the maritime trades between that nation and the United States.

SEC. 902. MARITIME INDUSTRY ADVISORY COMMITTEE.

(a) The Secretary of Commerce shall establish a Maritime Industry Advisory Committee (hereinafter referred to as the "Committee") to advise the United States Government on the negotiation and implementation of intergovernmental maritime agreements. The Committee shall consist of at least nine members as follows: five members who have been nominated by United States-flag carriers; one member from an organization that represents United States shipboard labor; one member who is a United States importer; one member who is a United States exporter; and one member who represents a United States port. The Committee shall designate one of its members as Chairman.

(b) The Secretary of Commerce shall seek and give appropriate consideration to the recommendations and views of the Committee throughout the process of negotiating any intergovernmental maritime agreement.

(c) The Committee shall meet, at least quarterly, at the call of the Chairman, and shall submit, at least annually a report to the Secretary of Commerce containing its recommendations and views on intergovernmental maritime agreements in force or which may be under consideration.

(d) The Committee may designate at least one representative to be a fully accredited member of each delegation of the United States Government to any international conference or meeting at which an intergovernmental maritime agreement is to be negotiated or considered.

(e) No funds may be expended to carry out the provisions of this section other than funds appropriated for fiscal years commencing after September 30, 1980.

SEC. 903. NEGOTIATION OF INTERGOVERNMENTAL MARITIME AGREEMENTS.

(a) Whenever national policies of other nations might operate to exclude or otherwise discriminate against United States-flag operators in reciprocal trades with the United States, intergovernmental maritime agreements shall be presumed to be in furtherance of the declaration of policy set forth in section 101 of this Act. The United States Government shall, therefore, undertake to negotiate and conclude such agreements where circumstances warrant. The Secretary of Commerce, as head of the lead agency, in consultation with the Secretary of State, shall be responsible for negotiating and concluding such agreements.

(b) Negotiation and conclusion of intergovernmental maritime agreements shall to the extent practicable, further the opportunity of United States-flag carriers to participate in the reciprocal nation's trades with countries other than the United States. The Secretary of Commerce, in consultation with the Secretary of State, shall be authorized to restrict or ban participation of national carriers of nations which fail to assure United States-flag carriers equivalent participation in that nation's trades with countries other than the United States.

SEC. 904. RELATIONSHIP TO OTHER LAWS.

Nothing in this title shall supersede the provisions of section 901 of the Merchant Marine Act, 1936 (46 U.S.C. 1241); the Military Ocean Transportation Act (10 U.S.C. 2631); of Public Resolution Numbered 17, Seventy-third Congress (48 Stat. 500), as amended.

TITLE X—CONFORMING AMENDMENTS; REPEALS

SEC. 1001. CONFORMING AMENDMENTS TO THE SHIPPING ACT, 1916.

(a) Section 1 of the Shipping Act, 1916 (39 Stat. 728; 46 U.S.C. 801) is amended to read as follows:

"That when used in this Act:

"The term 'board or Commission' means the Federal Maritime Commission as established by Reorganization Plan No. 7 of 1961.

"The term 'carrying on the business of forwarding' means the dispatching of shipments by any person on behalf of others, by oceangoing common carriers in commerce from the United States, its territories, or possessions to foreign countries, or between such territories and possessions, and handling the formalities incident to such shipments.

"The term 'common carrier by water' means a person, whether or not actually operating a vessel, who holds himself out to engage in water transportation for hire as a public employment and undertakes to carry for shippers indifferently, but does not include one who holds himself out to engage in transportation by ferryboat or oceantramp.

"The term 'domestic offshore commerce' means ocean commerce between the contiguous United States and any of the following places or between or among any of the following places:

"(1) Alaska;

"(2) Hawaii;

"(3) Commonwealth of the Northern Marianas;

"(4) Commonwealth of Puerto Rico;

"(5) American Samoa;

"(6) Guam;

"(7) United States Virgin Islands; and

"(8) Other United States territories and possessions.

"The term 'independent ocean freight forwarder' means a person carrying on the business of forwarding for a consideration who is not a shipper or consignee or a seller or purchaser of shipments to foreign countries, nor has any beneficial interest therein, nor directly or indirectly controls or is controlled by a shipper or consignee or by any person having such beneficial interest.

"The term 'other person subject to this Act' means any person carrying on the business of freight forwarding or furnishing wharf, dock, warehouse, or other terminal facilities in connection with a common carrier by water in domestic offshore commerce.

"The term 'person' includes individuals, corporations, companies, associations, firms, partnerships, societies, joint stock companies, and the Government or any governmental agency of the United States, a State, territory, or possession thereof or of any foreign country.

"The term 'United States' includes the District of Columbia.".

(b) Sections 18(a), 19, and 20 of the Shipping Act, 1916 (46 U.S.C. 817(a), 818, and 819), are amended by striking the word "interstate" each time it appears and substituting the words "domestic offshore".

(c) The title of the Shipping Act, 1916, (39 Stat. 728) is amended to read as follows: "An Act to regulate the domestic offshore commerce of the United States.".

SEC. 1002. TABLE OF REPEALED SECTIONS.

(a) The laws specified in the following table are repealed:

Shipping Act, 1916:	
14a	46 U.S.C. 813
14b	46 U.S.C. 813a
18(b)	46 U.S.C. 817(b)
26	46 U.S.C. 825
43	46 U.S.C. 841a
Merchant Marine Act, 1920:	
19	46 U.S.C. 867
20	46 U.S.C. 812
Merchant Marine Act, 1936:	
208	46 U.S.C. 1118
212(e)	46 U.S.C. 1122(e)
214	46 U.S.C. 1124

(b) Repeal of the laws set forth in subsection (a) of this section shall not affect any rights and duties that matured, penalties that were incurred or proceedings that were commenced before the date of enactment of this Act.

SEC. 1003. LAWS RELATING TO THE DOMESTIC OFFSHORE COMMERCE OF THE UNITED STATES.

(a) The Shipping Act, 1916, is amended by redesignating section 3, and all references thereto, as section 4 and inserting the following new section after section 2:

"SEC. 3. Commencing with the date of enactment of this section, the provisions of sections, 4, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 27, 29, 30, 31, 32, 33, 34, 35, and 44 of this Act shall be deemed to apply only to the domestic offshore commerce of the United States as defined in section 1 of this Act. Nothing in this section shall be construed to affect any rights or duties that matured, penalties that were incurred, or proceedings that were commenced prior to the date of enactment of this section.".

(b) Section 8 of the Merchant Marine Act, 1920 (46 U.S.C. 867) is amended by designating the existing language as subsection (a) and adding at the end thereof the following new subsection:

"(b) Commencing with the date of enactment of this subection, the provisions of this section shall be deemed to apply only to the domestic offshore commerce of the United States as defined in section 1 of the Shipping Act, 1916 (46 U.S.C. 801). Nothing in this subsection shall be construed to affect any rights or duties that matured, penalties that were incurred, or proceedings that were commenced prior to the date of enactment of this subsection.".

(c) Section 205 of the Merchant Marine Act, 1936 (46 U.S.C. 1115) is amended by designating the existing language as subsection (a) and adding at the end thereof the following new subsection:

"(b) Commencing with the date of enactment of this subsection, the provisions of this section shall be deemed to apply only to the domestic offshore commerce of the United States as defined in section 1 of the Shipping Act, 1916, (46 U.S.C. 801). Nothing in this subsection shall be construed to affect any rights or duties that matured, penalties that were incurred, or proceedings that were commenced prior to the date of enactment of this subsection.".

(d) Section 18(c) of the Shipping Act, 1916 (46 U.S.C. 817(c)), and all references thereto, is redesignated as section 18(b).

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BAKER. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

EXECUTIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to executive session for the purpose only of considering the nomination of Mr. Gary Blakeley.

Mr. BAKER. Mr. President, reserving

the right to object, and I shall not object, this reservation is to advise the majority leader that the nominee identified by him is cleared on our calendar and we have no objection to its consideration and confirmation.

There being no objection, the Senate proceeded to the consideration of executive business.

The PRESIDING OFFICER. The nomination will be stated.

FOUR CORNERS REGIONAL COMMISSION

The assistant legislative clerk read the nomination of Gary Blakeley, of New Mexico, to be a Federal cochairman of the Four Corners Regional Commission.

● Mr. DOMENICI. Mr. President, I am extremely pleased that the full Senate is considering the nomination of Gary Blakeley as Federal Cochairman of the Four Corners Regional Commission.

Mr. Blakeley's professional service coupled with his numerous civic responsibilities make him well-suited for this position. He is the former director of the State of New Mexico Department of Energy and Minerals, was the New Mexico Public Service Commissioner from 1975 to 1979, and was the director of governmental affairs for the Albuquerque Chamber of Commerce from 1972 to 1975.

I have talked at some length with Mr. Blakeley about the role of the regional commissions, and I think we can expect some very exciting activities within Four Corners. Mr. Blakeley has carefully examined past activities of the Commission and is up-to-snuff on actions taken by the Congress in reauthorizing the regional commissions.

But, Mr. President, perhaps the best qualification of Mr. Blakeley is that he was born, raised, and educated in that great State of New Mexico. I am sure that you recognize the importance of his background that allows him to be particularly responsive to the concerns of the Four Corner States.

I appreciate the opportunity to address Mr. Blakeley's nomination.●

The PRESIDING OFFICER. Without objection, the nomination is considered and confirmed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the nomination was confirmed.

Mr. BAKER. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the President be notified of the confirmation of the nomination.

The PRESIDING OFFICER. Without objection, it is so ordered.

LEGISLATIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate return to the consideration of legislative business.

The PRESIDING OFFICER. Without objection, it is so ordered.

SEQUENTIAL REFERRAL OF INTELLIGENCE BILL

Mr. ROBERT C. BYRD. Mr. President, the Intelligence Committee has reported to the Senate S. 2597, a bill authorizing appropriations for the Central Intelligence Agency and other intelligence activities for fiscal year 1981.

Section 3(b) of Senate Resolution 400, which established the Senate Select Committee on Intelligence, provides that if that committee reports legislation containing any matter otherwise within the jurisdiction of any standing committee, that bill may, at the request of the chairman of that standing committee, be referred to it for consideration for a period not to exceed 30 days.

Mr. President, since this bill contains authorization of appropriations for intelligence activities of the Department of Defense, it falls within the long-standing jurisdiction of the Committee on Armed Services. On behalf of Senator STENNIS, I therefore request that the bill be referred to the Armed Services Committee for 30 days.

The PRESIDING OFFICER. Without objection, it is so ordered.

ENERGY MOBILIZATION BOARD

Mr. ROBERT C. BYRD. Mr. President, yesterday, conferees on the Energy Mobilization Board bill broke the deadlock which had tied up the conference and agreed to a compromise which will speed the legislation to rapid final passage. I congratulate the conferees on this breakthrough. Creation of the Energy Mobilization Board is one of the three pillars on which our national drive to achieve energy security rests. This legislation will allow the construction of priority energy projects, such as refineries, pipelines, synfuels plants and coal-burning powerplants, to be expedited. It is critical that we begin to untangle the regulatory maze if we are to make better use of our own plentiful energy resources.

This legislation presented highly complex and controversial legal issues. In particular, the difference between the Senate and the House on whether or not to waive substantive provisions of Federal law was most difficult to resolve. Each position had merit and the balance between this Nation's energy needs and environmental protection had to be carefully measured. The conferees have agreed on a bill which will give the Energy Mobilization Board broad powers to speed key energy projects, while retaining, under most circumstances, environmental safeguards. This is the type of compromise which is in the best interests of our Nation's future.

It is my understanding that the conference report will be completed within a short period of time, allowing this measure to come before the Senate for final approval within the next few days. I hope my colleagues will act expeditiously on this matter. They will take a great step toward energy security by final passage of this legislation.

ORDER FOR RECESS UNTIL 11 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until the hour of 11 o'clock tomorrow morning.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR RECESS FROM FRIDAY UNTIL 10 A.M. MONDAY, APRIL 28, 1980

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business on tomorrow it stand in recess until the hour of 10 a.m. on Monday.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS UNTIL 11 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate I move, in accordance with the previous order, that the Senate stand in recess until tomorrow morning at 11 o'clock.

The motion was agreed to; and at 6:52 p.m., the Senate recessed until Friday, April 25, 1980, at 11 a.m.

CONFIRMATION

Executive nomination confirmed by the Senate April 24, 1980:

FOUR CORNERS REGIONAL COMMISSION

Gary Blakeley, of New Mexico, to be Federal Cochairman of the Four Corners Regional Commission.

The above nomination was approved subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.